SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 967.

DAKOTA CENTRAL TELEPHONE COMPANY, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF SOUTH DAKOTA, EX REL. BYRON S. PAYNE, ATTORNEY GENERAL, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA.

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1 In the Supreme Court of the State of South Dakota.
STATE OF SOUTH DAKOTA, *County of Minnehaha, ss:*

I hereby certify and return that the within Summons, Complaint, Affidavit, Motion and Order, came into my hands for service on the 24th day of January 1919; that on the same day at Sioux Falls, Minnehaha County, S. D. I served the same on the South Dakota State Telephone Company, a corporation, by delivering to and leaving with M. L. Lane, President, true and correct copies thereof. I further certify and return I know the person so served to be the President for said corporation.

HERMAN WANGSNESS,
Sheriff of Minnehaha County, S. D.
By JULIUS WOLD,
Deputy Sheriff.

Sheriff fees:

Summons	60
Copy	25
Complaint	60
Copy	100
Affidavit	50
Copy	25
Motion	50
Copy	25
Order	50
Copy	25
Mileage	40
	$5.10

2 In the Supreme Court of the State of South Dakota.
STATE OF SOUTH DAKOTA, *County of , ss:*

STATE OF SO. DAK., EX REL. BYRON S. PAYNE, AS ATTY General and John J. Murphy, et al. Plaintiff,
vs.
DAKOTA CENTRAL TELEPHONE CO. ET AL., DEFENDANTS.

I hereby certify and return that the hereto attached Summons, Complaint, Affidavit, Motion and Order to Show Cause came into my hands on the 22nd day of January 1919, and that on the 22nd day of January 1919, I served the same upon Dakota Central Telephone Co., a corp. by delivering to and leaving with J. F. Zietlow, General Superintendent for Dakota Central Telephone Co., the within named defendant, personally, a true copy of the hereto attached Summons, Complaint, Affidavit, Motion and Order to Show Cause, and I did

exhibit the signature of E. G. Smith, Judge, on the Original Order at Aberdeen in Brown County, South Dakota.

H. L. ELLIOTT,
Sheriff Brown County, South Dakota.
By ANTON GEISEN,
Deputy.

Sheriff's fees:

Service	$3.00
Copies	1.25
Travel	.40
Total	$4.65

3 *Summons.*

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL. BYRON S. PAYNE, AS attorney general, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation and South Dakota State Telephone Company, a corporation, defendants.

The State of South Dakota sends greeting to the defendants above named.

You and each of you are hereby summonded and required to answer the complaint of the above-named plaintiff, a copy of which complaint is hereunto attached and herewith served upon you, and to serve a copy of your answer upon the subscribers' attorneys for the plaintiff at their offices in the capitol building in the city of Pierre, Hughes County, South Dakota, within thirty days after the service of this summons upon you, exclusive of the day of such service, and you are hereby notified that if you fail to answer the complaint within the time stated, the plaintiff will apply to the court for the relief demanded in said complaint and for its costs and disbursements in this action.

Dated at Pierre, South Dakota, this 18th day of January, 1919.

BYRON S. PAYNE,
Attorney General.
OLIVER E. SWEET,
Assistant Attorney General.
P. W. DOUGHERTY,
Attorneys for plaintiff.

4 *Complaint.*

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL. BYRON S. PAYNE, AS attorney general, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation and South Dakota State Telephone Company, a corporation, defendants.

The above-named plaintiff, the State of South Dakota, on the relation of Byron S. Payne, as attorney general, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, complains, alleges, and shows to the court:

I.

That Byron S. Payne is the duly elected, qualified, and acting attorney general of the State of South Dakota, and that John J. Murphy and P. W. Dougherty are, and each of them is, a duly elected, qualified, and acting railroad commissioner of the State of South Dakota, and that collectively they are and constitute the Board of Railroad Commissioners of the State of South Dakota; and that the said Byron S. Payne, as attorney general, and the said John J.
5 Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, bring this action under and by the authority of the statutes and laws of this State, for and on behalf of all the people of this State.

II.

That the Dakota Central Telephone Company is a corporation organized and existing under and by virtue of the laws of the State of South Dakota and has and maintains its principal office and place of business at Aberdeen, in the State of South Dakota; that the Northwestern Telephone Exchange Company is a corporation organized and existing under by virtue of the laws of the State of Nebraska and has and maintains its principal office and place of business at Omaha in the State of Nebraska, and is authorized to transact business as a foreign corporation under the laws of and within the State of South Dakota; that the Nebraska Telephone Company is a cor-

poration organized and existing under and by virtue of the laws of the State of Nebraska, and has and maintains its principal office and place of business at Omaha in the State of Nebraska, and is authorized to transact business as a foreign corporation under the laws of, and within the State of South Dakota; that the South Dakota State Telephone Company is a corporation organized and existing under and by virtue of the laws of the State of South Dakota, and has and maintains its principal office and place of business in the city of Sioux Falls in the State of South Dakota; that each of the said defendants is a common carrier engaged in the transmission of long distance or toll telephone messages between points wholly within the State of South Dakota, and as such common carrier is subject to the laws of the State of South Dakota.

III.

That the Board of Railroad Commissioners of the State of South Dakota, is an administrative body created by law and authorized by the statutes of this State to supervise and regulate the business, property, and affairs of all telephone companies transacting business in said State; that under and by virtue of the provisions of section 2 of chapter 289 of the Session Laws of 1909 as amended by chapter 218 of the Session Laws of 1911, the said board is given general supervision and control over all telephone lines and exchanges constructed and operated in the State and by said section is required to inquire into any complaints of unjust discriminations, neglect, or violation of the laws of the State governing telephone companies, and is given power to fix individual rates, as well as to make schedules of maximum rates, including joint rates to be charged by any telephone company or companies for the rent of any line or instrument or for the transmission of any message and for any service in connection therewith, and to make such changes therein from time to time as it may deem reasonable or necessary, and to exercise any other power necessary to a proper supervision and control of such telephone companies; that, under the provisions of section 4 of chapter 289 of the Session Laws of 1909, as amended by chapter 218 of the Sessions Laws of 1911 of this State telephone companies are required before commencing to charge, collect, or receive any rate or charge for the transmission of any message, or for any service in connection therewith, to file with the Board of Railroad Commissioners a full, true, and correct tariff showing each such rate or charge; and by section 5 of said chapter 289 of the Session Laws of 1909, as amended by chapter 218 of the Session Laws of 1911 of said State that a public hearing should be held after giving ten days' notice thereof to the company or companies and any persons interested therein, before the Board of Railroad Commissioners shall make any individual rate or schedule of maximum telephone rates; and that by section 6 of said chapter 289 of the Session Laws of 1909, as

amended by chapter 218 of the Session Laws of 1911, every telephone company doing business in the State is required to file with the Board of Railroad Commissioners schedules or tariffs showing all rates and charges for the rent of any line or instrument and for the transmission of messages and any service in connection therewith between all points in this State, and all rules and regulations that in any manner affect such charges; and by the said section it is further provided that every telephone company shall file with the Board of Railroad Commissioners a copy of all proposed changes in any schedule of rates or charges at least thirty days before the same shall take
7 effect; and that no rate or charge for the transmission of any message, or for any other service in connection with any telephone line or exchange, shall be increased without the written consent of the Board of Railroad Commissioners, entered in the journal of its proceedings; and by the provisions of section 10 of chapter 207 of the Session Laws of 1911, as amended by chapter 304 of the Session Laws of 1913, it is provided among other things, that every telephone company shall print and keep for public inspection schedules showing the rates for the transmission of messages by telephone in this State which have been established and which are in force upon its lines, which schedules shall state any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such rates or the charges resulting therefrom; that no advance shall be made in the rates, fares, and charges or in the joint rates, fares, and charges which have been established and published by any telephone company in the manner aforesaid, or which had been established or ordered into effect at the time said act took effect by the Board of Railroad Commissioners, except after thirty days' notice to the Board and to the public as provided in said section, plainly stating the changes proposed to be made in the schedule then in force and the time when the increased rates, fares, and charges are desired; and by said section it is further provided that no such change in rates, rules, regulations, or practices shall go into effect until allowed by the Board of Railroad Commissioners, and that when any such telephone company shall have established and published its rates, fares, and charges in compliance with said section it shall be unlawful for such telephone company to charge, demand, collect, or receive from any person or persons, a greater or less compensation for the transmission of messages by telephone, or for any service in connection therewith, than those specified in such published schedules of rates, fares, and charges as may at that time be in force; that by the provisions of section 16 of said chapter 207 of the Session Laws of 1911, as amended by chapter 262 of the Session Laws of 1915 of this State, provision is made for instituting investigations before the Board of Railroad Commissioners by filing complaints against any rate, rule, regulation, or practice established and in effect for the transmission of telephone messages, or for any service in connection therewith, and by the said section, as amended, it is further provided that

8 the board of Railroad Commissioners shall by the same power and authority proceed with an inquiry instituted on its own motion as though it had been appealed to by a complaint or petition, including the power to make or enforce any order or orders relating to or concerning any matter or thing upon which the inquiry is had.

IV.

That pursuant to the laws of the State of South Dakota the defendant telephone companies have, with the consent and approval of the Board of Railroad Commissioners of this State, established and now have in force and effect, schedules of rates, fares and charges for the transmission of telephone messages and for all services in connection therewith between points within the State of South Dakota, as well as schedules of all rules, regulations, and classifications pertaining to the long distance or toll business transacted by said defendants in this State, all of which rates, fares, charges, rules, regulations, and classifications are subject to complaint by any person interested, and are subject to investigation by the Board of Railroad Commissioners; and that such rates, fares, charges, rules, regulations, and classifications governing and applying to the intrastate long distance or toll service of the defendants have been duly established and published as provided by the laws of this State; and that the Board of Railroad Commissioners of the State of South Dakota is now, on its own motion, engaged in a state-wide investigation into the reasonableness, justness, and propriety of the long distance or toll rates in effect for the intrastate transmission of telephone messages by the defendant telephone companies in this State, as well as of all of the rules, regulations, and classifications governing or applying in connection with the said rates; and that the said Board of Railroad Commissioners is proceeding with the said investigation, and upon conclusion thereof will, under the powers conferred upon it by the laws of this State, make its final determination fixing and establishing such rates, fares, charges, rules, regulations, and classifications as, in its judgment, shall be just, reasonable, and proper for the transmission of long distance or toll telephone messages, and for all services in connection therewith between points within the State of South Dakota.

V.

That, notwithstanding the provisions of the laws of the
9 State of South Dakota prescribing the manner in which changes or increases may be made in telephone toll rates and charges and wholly disregarding the same and in entire disregard for the power and authority of the Board of Railroad Commissioners in the premises, the said defendant telephone companies, and each of them, as well as many other telephone companies engaged in a small way

in the long distance or toll telephone business in this State, are now proposing and threatening to, and will, unless restrained by the order of this court, establish and put into effect new tariffs or schedules of rates, fares, charges, rules, regulations, and classifications for the transmission of long distance or toll telephone messages between points within the State of South Dakota on the 21st day of January, 1919; and that such tariffs or schedules of rates, fares, charges, rules, regulations and classifications propose entirely new rules and regulations and entirely new classifications of the toll or long distance telephone service, including messages to be known as station to station calls, person to person calls, appointment calls, as well as charges to be known as report charges; and that the said proposed rates and the said proposed rules, regulations, and classifications will result in greatly increasing the existing and established rates, fares, and charges for the transmission of long distance or toll messages, and for services in connection therewith between points within the State of South Dakota; and that the said defendants have not, nor has any one of them, applied to the Board of Railroad Commissioners for authority to make the said increased rates, fares, and charges effective in this State; and that unless restrained by order of this court said defendants, and each of them, will make the said rates, fares, and charges effective for the transmission of telephone messages and for services in connection therewith between points within the State, without having given notice as required by law to the Board of Railroad Commissioners and to the public, and without having procured the approval thereof by the Board of Railroad Commissioners, and without having had the same allowed by the Board of Railroad Commissioners prior to having the same put into effect.

VI.

That as plaintiff is informed and believes and, therefore, alleges for the information of the court, the defendant telephone companies take the position that they have the power and authority to establish the rates which they propose to make effective January 21, 1919, to apply upon the South Dakota intrastate traffic, for the reason that on July 23, 1918, the President of the United States by proclamation took possession and assumed control and supervision of each and every telegraph and telephone system, and every part thereof, within the jurisdiction of the United States, including each of the defendant telephone companies, with all the equipment thereof and appurtenances thereto whatsoever, and all materials and supplies, and placed them under the charge of the Postmaster General, Albert S. Burleson, in compliance, as the said telephone companies contend, with authority conferred upon the President under a resolution adopted by the Congress of the United States on July 13, 1918, purporting to confer upon the President, during the continuance of the

war, power to supervise and take possession and assume control of such telephone companies and to operate the same in such manner as might be needful or desirable for the duration of the war; and that as the defendant telephone companies contend the rates which they propose to make effective upon South Dakota intrastate long-distance or toll telephone messages on January 21, 1919, were initiated by the Postmaster General by General Order No. 2495, issued on December 13, 1918, in Telegraph and Telephone Service Bulletin No. 22, under alleged authority conferred upon him by the said resolution of Congress of July 13, 1918, and the said proclamation of the President dated July 23, 1918; and that, as the defendant telephone companies contend, the Federal authority in the making of the proposed long-distance or toll telephone rates must predominate over the State authority to fix and determine rates for the intrastate transmission of long-distance or toll telephone messages between points in this State; and that, as the defendant telephone companies contend, they are, therefore, required by law to establish and make effective the rates as initiated by the Postmaster General and are relieved from any obligation to comply with any of the laws of the State of South Dakota prescribing or relating to the manner in which advances or changes may be made in the intrastate telephone rates in this State; and with reference to this position and these contentions of the defendant telephone companies the plaintiff alleges and shows that the Postmaster General has no power or authority under the said resolution of Congress or under the said proclamation of the President to initiate rates for the transmission of long-distance or toll telephone messages between points wholly within the State of South Dakota, or
11 between points wholly within any other State; and that, on the other hand, it is expressly provided in the said resolution of Congress dated July 13, 1918, that: "Nothing in this act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications or the use of stocks and bonds by such system or systems"; and that thereby there was reserved to the State of South Dakota in pursuance of its lawful police regulations the power and authority to establish and regulate by and through its Board of Railroad Commissioners, the rates for the transmission of long-distance or toll telephone messages and for all services in connection therewith between points wholly within the State of South Dakota; and that neither the said resolution of Congress nor the said proclamation of the President conferred any power or authority upon the Postmaster General or upon the defendant telephone companies or either of them, to establish or make effective for the transmission of long-distance or toll telephone messages between points within the State of South Dakota any rates whatever, except for Government communications without complying with the laws of the State of South Dakota and particu-

larly section 10 of chapter 207 of the Session Laws of 1911 thereof as amended by chapter 304 of the Session Laws of 1913 which prohibits any change or advance in the established intrastate telephone rates in this State until thirty days' notice of the fact that such advances or changes will be made, and of the date when the same will become effective shall be first given to the public and to the Board of Railroad Commissioners, and which prohibits the making of such advances or changes unless and until the same have been allowed by the Board of Railroad Commissioners; that the long-distance or toll telephone rates which the defendant telephone companies propose to make effective between points in South Dakota on January 21, 1919, are not intended solely for application to the transmission of Government communications, but are intended for application to all intrastate communications by telephone to be handled by the said telephone companies, including ordinary social and commercial communications between points within this State.

VII.

That the State of South Dakota, in its sovereign capacity,
12 as one of the States of the United States of America, has a direct financial interest in this action in this, to wit, that the State of South Dakota, through its several departments, is a heavy user of the long-distance or toll telephone lines of the defendant telephone companies in long-distance telephone communications between stations in this State over the lines owned and operated by the defendant company; and that the plaintiff is advised and believes, and, therefore, alleges the fact to be, that if the defendant telephone companies be permitted to put into effect the proposed rates, charges, rules, regulations, and classifications which it threatens to put into effect on January 21, 1919, as applying on intrastate long-distance or toll telephone service in this State, the long-distance telephone charges to the State of South Dakota and to the long-distance telephone users of this State will be greatly increased.

VIII.

That the plaintiff is without any plain speedy or adequate remedy at law for the wrongs threatened and complained of.

Wherefore, the plaintiff prays judgment that a temporary injunction be issued by this court enjoining and restraining the defendants, and each of them and their officers, agents, attorneys, and employees, pending the final determination of this action, from putting into effect or applying to, and from charging, collecting, and receiving for the transmission of long-distance or toll telephone messages between points within the State of South Dakota, the rates, fares, charges, rules, regulations, or classifications proposed in the said tariffs or schedules heretofore issued, and to be made effective on January 21,

1919; and that if the said defendant telephone companies shall ever put into effect or charge, collect, or receive any of the said proposed rates that they be restrained, pending the final determination of this action, from continuing to charge, collect, or receive the same; and that upon the trial of this action the issue of an injunction permanently enjoining and restraining the defendant telephone companies, and each of them and their officers, agents, attorneys, and employees from putting into effect, or applying, and from charging or continuing to charge, demand, collect, or receive for the transmission of long-distance or toll telephone messages between any points in this State,
13 rates, fares, charges, rules, regulations, or classifications that will result in rates, fares, and charges greater than the rates or charges for intrastate communication by telephone, long-distance, or toll lines within the State that are now in effect, with the approval of the Board of Railroad Commissioners of this State, or that will result in rates, fares, and charges greater than the maximum rates or charges for such intrastate communication by telephone between points within this State, as the Board of Railroad Commissioners may hereafter approve, allow, fix, or establish after a full investigation in the premises; and that the plaintiff have such other and further relief as to the court may seem just and equitable; and that it be awarded its costs and disbursements in this action.

BYRON S. PAYNE,
Attorney General.
OLIVER E. SWEET,
Asst. Atty. General.
P. W. DOUGHERTY,
Attorneys for plaintiff.

STATE OF SOUTH DAKOTA.
County of Hughes, ss:

John J. Murphy, being first duly sworn, deposes and says that he is a duly elected, qualified, and acting railroad commissioner of the State of South Dakota and is a member of the Board of Railroad Commissioners of this State, and as such is one of the relators in the action entitled in the foregoing complaint; that he has read said complaint, understands the same, and knows of his own knowledge that the same is true, except as to those matters therein stated upon information and belief, and as to those matters that he believes it to be true.

JOHN J. MURPHY.

Subscribed and sworn to before me this 20th day of January, 1919.
[SEAL.] H. A. USTRUD,
Notary Public.

14 *Affidavit.*

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL. BYRON S. PAYNE, AS Attorney General, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, defendants.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

John J. Murphy, being first duly sworn, deposes and says that he is a duly and legally elected, qualified, and acting railroad commissioner and a number of the Board of Railroad Commissioners of the State of South Dakota, and that he is one of the relators in the above entitled action; that as such railroad commissioner and in the course of the performance of his official duties he has frequently had occasion to examine the schedules of long distance or toll telephone rates and fares that have been, during the past four or five years, demanded, charged, and collected by the defendant telephone companies above named for the transmission of messages by telephone between points within the State of South Dakota, and that he knows the rates and fares so charged and collected are and have been rates and fares that were and have been from time to time fixed and established in the manner provided by the laws of this State with the consent and approval of the board of railroad commissioners of said State and that many of such rates, fares, and charges and the rules, regulations, and classifications governing same are those which have been fixed and approved by the board of railroad commissioners as a re-

15 sult of investigations conducted by the board.

That during the past six years and more the board of railroad commissioners of this State has continuously exercised jurisdiction and power under the laws of this State to fix, establish, regulate, and otherwise control all telephone companies including the defendants above named so long as each of them has been engaged in business in this State with reference to their rates, fares, charges, rules, regulations, and classifications applying to the transmission of messages and communications over long distance or toll lines and by the use of long distance or toll facilities between points within the State of South Dakota; that there is not now pending before the said board of railroad commissioners any application by the defendant telephone companies for permission to increase any of their rates, fares, charges or rules, regulations or classifications applying to the long distance or toll service of the said companies in this State; that,

however, the board of railroad commissioners is now engaged in an investigation upon its own motion into the matter of the rates, services, and facilities of the defendant telephone companies and other telephone companies with respect to their long distance or toll telephone business within this State, and that the purpose of said investigation is to determine what are and for the future will be just, reasonable, and non-discriminatory rates, fares, charges, rules, regulations, and classifications to apply in connection with and to govern long distance or toll telephone service being rendered by the said defendants and other telephone companies within the State of South Dakota; that the board of railroad commissioners has not yet completed said investigation and has made no report or decision therein.

16 That affiant has been informed by officers of the defendant telephone companies that on the 21st day of January, 1919, they will put into effect and apply for the transmission of long-distance or toll telephone messages between points within the State of South Dakota the rules, regulations, and classifications of toll telephone service as well as the rates to be charged therefor, which are contained in order No. 2495, issued December 13, 1918, by the United States Telegraph and Telephone Administration, under the direction of Albert S. Burleson, Postmaster General, the said order being otherwise known as Telegraph and Telephone Service Bulletin No. 22; that affiant has carefully examined the said order No. 2495 and has compared the regulations and the rates therein proposed to be made effective with the regulations and the rates which now govern the transmission of long-distance or toll telephone messages and communications in this State and that the said order No. 2495, if permitted to become effective, will result in establishing new classifications of toll telephone service, including station to station messages, person to person calls, appointment calls, and report charges which have never been effective in this State, and that the rates proposed to be made effective by the said order No. 2495 and the charges authorized therein will result in very substantially advancing and increasing the rates, fares, and charges of the defendant telephone companies for long-distance or toll telephone service in this State; that as affiant is informed and believes, the said increases and advances in rates and the said new rules, regulations, and classifications are proposed to be established without any investigation as to their propriety or reasonableness when applied to intrastate communications by long-distance or toll telephones between stations in South Dakota and that, as affiant is informed and believes, the rates, fares, and charges that will result if the said order is permitted to become effective will be unjust,

17 unreasonable, and excessive and will result in imposing an improper and unnecessary burden upon the users of long-distance or toll telephone service afforded by the defendants and other telephone companies in this State.

That as affiant is informed and believes the defendant telephone companies are proposing and threatening to make and will make the said advanced and increased rates effective in this State unless re-

strained by order of this court; that as affiant is informed and believes the defendant telephone companies have no authority or power and the Postmaster General has no power or authority to make the said proposed advances and increases in rates effective within this State; that the board of railroad commissioners has never approved or allowed the said proposed rates, fares and charges, rules, regulations, or classifications to be made effective for the transmission of long-distance or toll telephone messages or communications between points in this State, and that the defendant telephone companies, unless restrained by order of this court, will put the said proposed advanced and increased rates and charges into effect without complying with, and in violation of, the provisions and requirements of the laws of this State, and particularly section 10 of chapter 207 of the laws of 1911 thereof, as amended by chapter 304 of the laws of 1913 of the State of South Dakota, which prevent telephone companies in this State, under the jurisdiction of the board of railroad commissioners, from advancing or increasing any rates, fares, or charges that have been established as required by laws of this State, except after thirty days' notice to the board and to the public, published as provided in said section, and which provides further that no change in
18 existing and established rates, rules, regulations, or practices shall go into effect in this State until allowed by the board of railroad commissioners.

JOHN J. MURPHY.

Subscribed and sworn to before me this 18th day of January, 1919.

[SEAL.] H. A. USTRUD,
Notary Public.

19 *Motion.*

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL. BYRON S. PAYNE, AS Attorney General, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, defendants.

Comes now the plaintiff, the State of South Dakota, on the relation of Byron S. Payne, attorney general, and John J. Murphy and

P. W. Dougherty as and constituting the board of railroad commissioners of the State of South Dakota. and moves the court to issue an order to the defendants in this action to show cause why they and each of them and their agents, employees, servants, attorneys, representatives, and all persons acting for and on behalf of either of them should not be restrained and enjoined pending the final determination of this action from putting into effect and applying on and from charging, collecting, or receiving for the transmission of long distance or toll telephone messages or communications between points or stations on lines of the defendant telephone companies wholly within the State of South Dakota any of the rates, fares, or charges, or any of the rules, regulations, or classifications named or contained in the Postmaster General's general order No. 2495 which the defendant telephone companies threaten and propose to make effective in this State on January 21, 1919, and further to show cause why they and each of them, their agents, employees, servants, attorneys, representatives and all persons acting for and on behalf of either of them should not be enjoined and restrained pending the final determination of this action from charging, collecting, or receiving for the transmission of long distance or toll telephone messages or communications between points wholly within the State of South Dakota and rates, fares, charges, or compensation whatever higher than or in excess of the rates, fares, charges, and compensation now in effect in this State, which have been established and approved or permitted to become effective by the board of railroad commissioners in the manner provided by the laws of this State.

And the plaintiff further moves that each of said defendant telephone companies, their agents, employees, servants, attorneys, and representatives, and all persons acting for or on behalf of either of them be, by order of this court, restrained from making any of the said proposed increased rates, fares, charges, rules, regulations, or classifications effective in this State prior to the hearing upon this motion for a temporary restraining order.

This motion is made and based upon the summons and complaint of the plaintiff and upon the affidavit of John J. Murphy on file in this court.

Dated at Pierre, South Dakota, this eighteenth day of January, 1919.

BYRON S. PAYNE,
Attorney General,
OLIVER E. SWEET,
Assistant Attorney General,
P. W. DOUGHERTY,
Attorneys for Plaintiff.

21 *Order to show cause.*

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL. BYRON S. PAYNE, AS Attorney General, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION; Northwestern Telephone Exchange Company, a corporation; Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, defendants.

Upon the complaint of the plaintiff, in the above entitled action and the affidavit of John J. Murphy, a copy of which is hereunto attached, hereby referred to and made a part hereof; and the Court being advised in the premises and good and sufficient cause for this order appearing, now, therefore, on motion of Byron S. Payne, Oliver E. Sweet, and P. W. Dougherty, attorneys for the plaintiff.

It is hereby ordered that the defendant telephone companies and each of them show cause before this court, in the Supreme Court Room, in the Capitol Building, in the city of Pierre, Hughes County, South Dakota, on Tuesday, the 4th day of February, 1919, at the hour of 10:00 o'clock in the forenoon of that day, why they, their agents, servants, employees, attorneys, representatives and all persons acting for or on behalf of them should not be enjoined and restrained pending the final determination of this action from put-

22 ting into effect, demanding, charging, collecting, or receiving rates, fares or charges for the transmission of long distance or toll telephone messages between points wholly within the State of South Dakota that are higher than or in any wise exceed or differ from the rates and charges now in effect, and that have been established with the consent of or allowed to become effective by the Board of Railroad Commissioners of the State of South Dakota, pursuant to the provisions of the laws of said State, and that they likewise show cause why they, their agents, servants, employees, attorneys, representatives and all persons acting for or on behalf of them should not be enjoined and restrained pending the final determination of this action from in any wise changing the existing rules, regulations, and classifications governing transmission of long distance or toll messages between points within the State of South Dakota; and that at said time and place the defendants, and each of them show cause why they, their agents, servants, employees, attorneys, representa-

tives and all persons acting for or on behalf of them, should not be enjoined and restrained pending the final determination of this action from putting into effect and from charging, demanding, collecting or receiving for the transmission of long distance or toll telephone messages between points wholly within the State of South Dakota, any of the rates, fares, or charges or any of the rules, regulations, or classifications which the defendant telephone companies in alleged compliance with General Order No. 2495 of the Postmaster General, are proposing to make effective in this State on January 21, 1919.

It is further ordered, that in the meantime and pending the determination of this order to show cause or until the Court shall otherwise order and direct, the defendants and each of them, their agents, servants, employees, attorneys, representatives and all persons acting for or on behalf of them or either of them be, and they are, and each of them is hereby enjoined and restrained from putting into effect or applying or charging or collecting or receiving for the
23 transmission of long distance or toll telephone messages between points within the State of South Dakota, any of the rates, fares, or charges or any of the rules, regulations, or classifications named or contained in the said General Order No. 2495, issued by the Postmaster General, December 13, 1918, which the defendants propose to make effective in this State on January 21, 1919, and,

It is further ordered, that service of this order be made upon the defendants forthwith, and that the defendants serve upon attorneys for plaintiff their answer or return to this order on or before January 31, 1919, and that the plaintiff serve upon attorneys for the defendants any reply it may care to make to the said answer or return on or before February 4, 1919.

Given at the city of Pierre, the capital, on this 20th day of January, 1919.

By the Court:

E. G. SMITH,
Presiding Judge.

Attest:
[SEAL.] E. F. SWARTZ,
Clerk of Supreme Court.

(Indorsed:) 4526. State of South Dakota, county of Brown, Sheriff's Office, Jan. 22, 1919. Received. H. L. Elliott, Sheriff. ———, Deputy. (1) State ex rel. Payne vs. Dakota Central Telephone Co. et al. Original summons, complaint, affidavit, motion, and order to show cause in re writ of injunction. Supreme Court, State of South Dakota. Filed Jan. 20, 1919. E. F. Swartz, Clerk.

24 *Answer.*

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL., BYRON S. PAYNE, AS Attorney General, and John W. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

v.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, defendants.

Now come the defendants and for answer to plaintiff's complaint, admit the allegations contained in paragraphs one (1), two (2), and seven (7) of plaintiff's complaint.

II.

Defendants for further answer admit the allegations in paragraph three (3) and four (4) of plaintiff's complaint, except that defendants alleges that there is no statute or law of South Dakota empowering or authorizing the Board of Railroad Commissioners of South Dakota to supervise and control rates for telephone service on telephone lines or systems operated, controlled and supervised by the President of the United States, acting through and by the Postmaster General of the United States under the several acts of Congress and proclamation of the President, hereinafter more
25 fully set forth.

III.

Defendants for further answer admit the allegations contained in the fifth (5th) paragraph of plaintiff's complaint, except that defendants allege that their disregard of the power and authority of the Board of Railroad Commissioners is due to and on account of and pursuant to the operation of the defendant's telephone properties and systems by the Postmaster General of the United States, pursuant to the resolution of Congress dated July 16th, 1918, and the proclamation of the President in relation thereto dated July 22nd, 1918, and the orders of said Postmaster General in the premises; all of which are more fully hereinafter set forth, and not to any desire, intent, or purpose on the part of these defendants to ignore or disregard the power or authority of said Board of Railroad Commissioners under the laws of the State of South Dakota.

IV.

Defendants for further answer admit the allegations contained in paragraph six (6) of plaintiff's complaint, except that defendants did not take the position that they have the power and authority to establish the rates which they propose to make effective January 21st, 1919, but allege that the proposed rates were prescribed by the Postmaster General of the United States, pursuant to the resolution of Congress of July 16th, 1918, and the proclamation of the President of July 22nd, 1918, as hereinafter set forth, and that the defendant companies intended to apply said rates on and after January 21st, 1919, only because ordered and directed by the Postmaster General of the United States so to do and not by reason of any desire, intent or purpose of these defendants to disregard the power and authority of the Board of Railroad Commissioners of the State of South Dakota, or the laws of the State of South Dakota.

V.

Defendants for further answer allege that on the 16th day of July, 1918, the Congress of the United States adopted a resolution as follows:

"Joint resolution to authorize the President, in time of war, to supervise or take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any
26 part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war, and to provide compensation therefore.

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President during the continuance of the present war is authorized and empowered, whenever he shall deem it necessary for the national security or defense, to supervise or to take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: *Provided*, That just compensation shall be made for such supervision, possession, control, or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code:

Provided further, That nothing in this act shall be construed to amend, repeal, impair, or affect existing laws or powers of the State in relation to taxation or the lawful police regulation of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems."

That thereafter and on July 22nd, 1918, the President of the United States promulgated, published, and proclaimed the following proclamation:

A PROCLAMATION.

"Whereas the Congress of the United States, in the exercise of the constitutional authority vested in them by joint resolution of the Senate and House of Representatives, bearing date July 16, 1918, resolved:

"That the President, during the continuance of the present war, is authorized and empowered, whenever he shall deem it necessary for the national security or defense, to supervise or take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange or ratification of the treaty of peace: *Provided*, That just compensation shall be made for such supervision, possession, control, or operation to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid 75 per cent of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said 75 per cent, will make up such amount as will be just compensation therefor, in the manner provided for by section 24, paragraph 20, and section 145 of the Judicial Code: *Provided further*, That nothing in this act shall be construed to amend, repeal, impair, or affect existing laws or powers of the several States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems.

"And whereas it is deemed necessary for the national security and defense to supervise and take possession and assume control of all telegraph and telephone systems and to operate the same in such manner as may be needful or desirable:

"Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolution and by virtue of all other powers thereto me enabling, do hereby take possession and assume control and supervision of each and every telegraph and telephone system and every part thereof,

27

within the jurisdiction of the United States, including all equipment thereof and appurtenances thereto whatsoever and all materials and supplies.

"It is hereby decided that the supervision, possession, control, and operation of such telegraph and telephone systems hereby by me undertaken shall be exercised by and through the Postmaster General, Albert S. Burleson. Said Postmaster General may perform the
28 duties hereby and hereunder imposed upon him, so long and to such an extent and in such manner as he shall determine, through the owners, managers, boards of directors, receivers, officers, and employees of said telegraph and telephone systems.

"Until and except so far as said Postmaster General shall from time to time by general or special orders otherwise provide that the owners, managers, boards of directors, receivers, officers, and employees of the various telegraph and telephone systems shall continue the operation thereof in the usual and ordinary course of the business of said systems, in the names of their respective companies, associations, organizations, owners, or managers, as the case may be.

"Regular dividends hitherto declared, and maturing interest upon bonds, debentures, and other obligations, may be paid in due course; and such regular dividends and interest may continue to be paid until and unless the said Postmaster General shall from time to time otherwise by general or special orders determine; and, subject to the approval of said Postmaster General, the various telegraph and telephone systems may determine upon and arrange for the renewal and extension of maturing obligations.

"By subsequent order of said Postmaster General supervision possession, control, or operation may be relinquished in whole or in part to the owners thereof of any telegraph or telephone system or any part thereof supervision, possession, control, or operation of which is hereby assumed or which may be subsequently assumed in whole or in part hereunder.

"From and after 12 o'clock midnight on the 31st day of July, 1918, all telegraph and telephone systems included in this order and proclamation shall conclusively be deemed within the possession and control and under the supervision of said Postmaster General without further act or notice.

"In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done by the President, in the District of Columbia, this 22nd day of July, in the year of our Lord one thousand nine hundred and eighteen, and of the independence of the United States the one hundred and forty-third. (Signed) Woodrow Wilson.

"By the President,

"(Signed) FRANK L. POLK,
"*Acting Secretary of State.*"

VI.

That thereafter and pursuant to said resolution of Congress and proclamation of the President, the President, acting by and
29 thru the Postmaster General of the United States, did at twelve (12.00) o'clock midnight, on the 31st day of July, 1918, take possesion and assume the control and supervision, regulation, and operation of all telegraph and telephone properties, lines, and systems in the United States, including all the telegraph and telephone properties owned, controlled, or operated by these defendants, including all equipment thereof and appurtenances thereto whatsoever, and all materials and supplies.

That no part or portion of the telegraph or telephone properties of these defendants, so taken over by the President, or the operation or control thereof, have been relinquished to these defendants or either of them and will not be so relinquished until the date of exchange of ratification of the treaty of peace or until otherwise ordered or directed by Congress.

VII.

That thereafter and prior to the institution of this suit, the just compensation to be paid these defendants and each of them for such supervision, possession, control, and operation by the Postmaster General, during the period of the war, was determined by the President and agreed upon and accepted by these defendants. That by the acts of the United States Government in the premises the defendants, owners of said telephone systems and properties, were divested of their said property for the period of Federal control, except as to the legal title thereto and subject to the provision for just compensation in said joint resolution and proclamation, and the said properties were and now are vested as aforesaid in the United States, in its possession, under its protection and control, and are operated and directed by these defendants only as the officers, agents, and employees of the United States.

The operation of said systems under Federal control has been at all times for the account of the Federal Government, and the defendants have not had any pecuniary interest in the revenues or disbursements, or in the profits or losses of said operation since the period of Federal control began.

That after the Federal control began and prior to the institution of this suit, the defendant companies made and entered into a contract in writing with the Postmaster General fixing the just compensation to be paid for the supervision, possession, control, and operation
30 of said telephone systems and lines, effective as of midnight July 31st, 1918, which compensation is not dependent upon or affected by the financial results of the operation of said systems during the period of Federal control.

That said contract is in writing and is a public document of which this court may take judicial notice. A copy of the contract with defendant Dakota Central Telephone Company is hereto annexed marked Exhibit "B." The contracts with the other defendants are similar in form and substance. Contract with Nebraska Telephone Company dated October 14th, 1918, and with Northwestern Telephone Exchange Company dated October 19th, 1918. No contract has been made with South Dakota State Telephone Company.

VIII.

That thereafter and on December 13th, 1918, the Postmaster General, by order No. 2,495, prescribed the classification and the rates to be in force during the period of Federal control for service over all telephone lines and systems so possessed, operated, and controlled by him, including the telephone lines and systems owned and heretofore operated by these defendants.

That a copy of said order is hereto annexed and marked Exhibit "A" and made a part hereof. That copies of said order were duly filed with the Board of Railroad Commissioners of the State of South Dakota.

IX.

That the Congress of the United States has not made any appropriation or otherwise provided funds with which to pay the expense of operating, maintaining, and supervising the telephone properties so taken over by the President.

That in promulgating and establishing the rates set out in order No. 2,495 the President, acting thru the Postmaster General, claims to be exercising an executive discretion legally confided in him by the law of the United States hereinbefore set forth, and which discretion is not subject to judicial control or interference and to all which the powers and authorities of the several States and their officers are subordinate.

X.

These defendants for further answer allege that this court has no jurisdiction of these defendants, or either of them, or of their officers, agents, or servants, or of the subject of this action, for that, as dedefendants claim, it appears therein that the defendant, their officers, agents, and servants, were and are at all the times herein mentioned and in all matters alleged herein acting as officers, agents, and
31 employees of the United States, in accordance with the laws of the United States, and in respect to the property of the United States under the charge and control of the defendants as such officers and agents of the United States.

That for the protection and preservation of the said property so possessed, supervised, and controlled by the United States the Congress of the United States enacted the following statute:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whoever during the period of governmental operation of the telephone and telegraph system of the United States by the Postmaster General, under the act of Congress approved July sixteenth, nineteen hundred and eighteen, and the proclamation of the President dated July twenty-second, nineteen hundred and eighteen, shall, without authority and without the knowledge and consent of the other users thereof, except as may be necessary for operation of the service, tap any telegraph or telephone line, or willfully interfere with the operation of such telephone and telegraph systems or with the transmission of any telephone or telegraph message, or with the delivery of any such message, or whoever being employed in any such telephone or telegraph service shall divulge the contents of any such telephone or telegraph message to any person not duly authorized or entitled to receive the same shall be fined not exceeding $1,000 or imprisoned for not more than one year, or both.

"SEC. 2. That whoever shall steal, purloin, embezzle, or without authority destroy any money, property, record, voucher, or valuable thing whatever of the moneys, goods, chattels, records, or property of any telephone or telegraph system operated by the Postmaster General under the act of Congress approved July sixteenth, nineteen hundred and eighteen, and the proclamation of the President dated July twenty-second, nineteen hundred and eighteen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"SEC. 3. That whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain any money, property, record, voucher, or valu-
31 able thing whatever of the moneys, goods, chattels, records, or property of any telephone or telegraph system operated by the Postmaster General under the act of Congress approved July sixteenth, nineteen hundred and eighteen, and the proclamation of the President dated July twenty-second, nineteen hundred and eighteen, which has been embezzled, stolen, or purloined by any other person, knowing the same to be embezzled, stolen, or purloined, shall be fined not more than $1,000 or imprisoned not more than five years, or both, and such person may be tried either before or after the conviction of the principal defendant.

"SEC. 4. That whoever shall forcibly break into, or attempt to break into, any telephone or telegraph office, or any building used in whole of in part as such telephone or telegraph office, of any telephone or telegraph system operated by the Postmaster General under the Act of Congress approved July sixteenth, nineteen hundred and eighteen, and the proclamation of the President, dated July twenty-second, nineteen hundred and eighteen, with intent to commit in such telephone or telegraph office or building, or part thereof so used, any larceny or other depredation, shall be fined not more than $1,000 or imprisoned not more than five years or both.

"SEC. 5. That whoever shall assault any person having lawful charge, control, or custody of any money or property of any telephone or telegraph system operated by the Postmaster General under the Act of Congress dated July sixteenth, nineteen hundred and eighteen, and the proclamation of the President dated July twenty-second, nineteen hundred and eighteen, with intent to rob, steal, or purloin such money or property, or any part thereof, or shall rob any such person of such money or property, or any part thereof, shall be imprisoned not more than five years; and if in the effecting or attempting to effect such robbery, he shall wound such person having custody of the money or property, or put his life in danger by the use of a dangerous weapon, shall be imprisoned not more than ten years.

"Approved, October 29, 1918."

XI.

The defendants for further answer allege that this court is without jurisdiction in the premises because it appears as defendants
33 claim that this suit is in effect and reality a suit against the United States and plaintiff herein seeks by this suit to control the acts and discretion of the President of the United States in matters confided to him by the acts of the Congress of the United States, and seeks to control, dispose of and regulate the use of property taken over by the President as a war measure under authority of the Congress of the United States and seeks to compel these defendants to violate and disregard the contract heretofore mentioned now existing between these defendants and the United States relating to the operation of said telephone properties as well as the orders and directions of the Postmaster General in the premises and that the United States has not consented to be bound, sued, or controlled in any manner by or in this court; wherefore: defendants pray that the injunction sought by plaintiff be denied.

Defendants further pray that the court adjudge and decree that the Board of Railroad Commissioners of the State of South Dakota are without power or authority to regulate or exercise any jurisdiction over the matter of the rates for telephone service over the telephone lines and systems controlled and possessed by the President of the United States during the war and that the statutes of the State of South Dakota, relative thereto and set out in the complaint herein, are repugnant to and in conflict with the aforesaid laws of the United States.

That it further be adjudged and decreed that the defendant, their officers, agents, and servants are, during the period of Federal control, the officers, agents, and servants of the United States, and as such are subject only to the orders, directions, and control of the Postmaster General and of the President of the United States.

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That the telephone systems and lines involved herein are, during the period of Federal control, in the possesion, control, and under the supervision of the President of the United States.

That the acts of the Postmaster General in promulgating said classification and schedule of rates are and is the lawful exercise of authority conferred upon him by the laws of the United States and the proclamation of the President, and that it is the duty of the defendants as officers, agents, and servants of the United States to apply and enforce such classification and rates during the period of Federal control; and these defendants pray for such other and further relief as may be just and equitable.

34 Dated February 4th, 1919.

EDGAR M. MORSMAN, Jr.,
E. A. PRENDERGAST,
NULL & ROYHL,
Attorneys for Defendants.
R. P. STEWART,
United States Attorney for the District of South Dakota.

STATE OF SOUTH DAKOTA, *County of Beadle, ss:*

W. G. Bickelhaupt, being first duly sworn deposes and says: that he is the secretary of the defendant, the Dakota Central Telephone Company, in the above and foregoing action. That he makes this affidavit for and on behalf of said defendant corporation and on behalf of the other defendants in said action. That he has read said answer, understands the same and knows of his own knowledge that the same is true, except, as to those matters therein stated upon information and belief, and as to those matters that he believes it to be true.

W. G. BICKELHAUPT.

Subscribed and sworn to before me this 5th day of February, A. D. 1919.

Notary Public, Beadle County, So. Dakota.
[SEAL.] W. C. PETERSON,

NOTE: Copy of order No. 2495 attached to original answer as Exhibit "A."

35 (Exhibit "A.")

36 EXHIBIT "B."

Copy.

PROPOSAL FOR COMPENSATION OF DAKOTA CENTRAL TELEPHONE COMPANY TO THE POSTMASTER GENERAL.

(Subject to modification in particular cases.)

Post Office Department, United States of America. Washington, Government Printing Office, 1918.

POST OFFICE DEPARTMENT,
Washington.

Order No. 2288.

The proposal of the Dakota Central Telephone Company, and its subsidiary the Grant County Telephone Company of Milbank, South Dakota, a corporaetion of the State of South Dakota, dated November 23, 1918, with respect to just compensation for the use of the properties owned by it during the period of Federal control provided for in the joint resolution of Congress, approved July 16, 1918, and the proclamation of the President with respect thereto dated July 22nd, 1918, and the Order of the Postmaster General assuming supervision, possession, control, and operation of these and other telephone and telegraph properties, dated August 1, 1918, is hereby accepted on behalf of the United States, and compensation will be paid in accordance with the terms and provisions thereof.

By direction of the President.

A. S. BURLESON,
Postmaster General.

89193-18. Copy.

37 The Dakota Central Telephone Company of Aberdeen, State of South Dakota, a corporation of the State of South Dakota in behalf of itself and its subsidiary, the Grant County Telephone Company, of Milbank, South Dakota, a corporation of the State of South Dakota (which also joins in this proposal), hereinafter referred to as the "Owner," hereby offers to accept a just compensation for the supervision, possession, control and operation of the telephone system of the "Owner" taken by the President of the United States under a joint resolution of the Senate and House of Representatives, dated July 16, 1918, which supervision, possession, control, and operation commenced at twelve (12) o'clock midnight on the 31st day of July, 1918, and is hereinafter referred to as "Federal control," to be fixed as follows:

SECTION I.—MEANING OF WORDS USED HEREIN.

In this proposal the words "Postmaster General" are used to designate Albert S. Burleson or such other person as the President may from time to time appoint to exercise the powers conferred on him by law with reference to Federal control; the words "Commission," is used to designate the Interstate Commerce Commission; the word "Additions," shall be understood to mean additions, betterments, or replacements as defined by the Commission's System of Accounts (including extensions and improvements made through consolidations and purchases), the net cost of which under such system of accounts, is properly chargeable to fixed capital, that is to say, accounts:

No. 100. Fixed capital installed prior to January 1, 1913.

No. 101. Fixed capital installed since December 31st, 1912.

No. 104. Construction work in progress.

Wherever reference is made herein to the System of Accounts of the Commission, it shall be understood to mean the Uniform System of Accounts and Rules for Class A Telephone Companies prescribed by the Commission as such system existed at midnight July 31, 1918.

SECTION II.—PROPERTIES, MONEYS, ACCOUNTS, ETC., COVERED.

The owner's telephone system of which the President has taken such supervision, possession, control, and operation includes:

(a) All of the telephone property operated by the owner as parts of its telephone system, whether owned or leased, and all additions, including those through consolidations and purchases, made thereto during the period of Federal control, except that the owner reserves the right to use during Federal control such portions of office buildings owned by it and now occupied in the operation of its telephone system as may be reasonably necessary to provide accommodations for its corporate organization; and such use of the Federal Telephone System on such terms as the Postmaster General may prescribe.

(b) All materials and supplies on hand at midnight July 31, 1918. As soon as practicable a separate inventory of said material and supplies shall be made and authenticated for him by the signature of such person or persons as the Postmaster General may designate for that purpose, and for the owner by the signature of the president or a vice president of the owner, which inventory when so authenticated shall constitute a part of this proposal.

(c) The net balance as of midnight July 31, 1918, in the accounts shown on the books of the owner and under the uniform system of accounts for telephone companies prescribed by the Interstate Commerce Commission as follows: (1) Number 115, employees' working funds; (2) number 118, due from subscribers and agents; (3) number 119, accounts receivable from system corporations; (4) number 120, miscellaneous accounts receivable; and (5) number 123, other current assets.

(d) Twenty-five thousand dollars ($25,000.00) in cash for working capital, the use of which the Postmaster General is to have during the period of Federal control, without interest, which amount is the amount of working capital which the owner had on hand August 1, 1918.

(e) Any patents or licenses owned or controlled by the owner may be used by the Postmaster General without charge by the owner during the period of Federal control, but the right to such use shall not extend beyond said period, nor shall the use of patented devices owned by other individuals or companies be construed to confer any right upon the owner herein to use or to control the use of such devices after the termination of Federal control; nor shall the use during the period of Federal control of patented devices covered by pat-

ents of the owner or property other than that of the owner be construed to confer the right to continue such use after the termination of such period.

SECTION III.—STANDARD OF OPERATING EFFICIENCY.

During the period of Federal control, the operation of the property of the owner shall be continued at a standard of efficiency relatively equal to that of the past.

39 SECTION IV.—MAINTENANCE, DEPRECIATION, AMORTIZATION, ETC.

(a) During the period of Federal control, through current repairs and maintenance, the property of the owner shall be maintained by the Postmaster General up to a standard relatively equal to that on and prior to July 31, 1918, so that its state of repair and operating condition will be relatively the same at the expiration of the period of Federal control as at its beginning.

(b) In order to make the provision for depreciation and obsolescence relatively equal to that of the past, during the period of Federal control the Postmaster General shall set aside in each year (and at the same rate for each fraction of a year) (1) the sum of one hundred and thirty-four thousand dollars ($134,000.00); and (2) an amount equal to five per cent (5%) of the cost of each addition to the property of the owner during the period of Federal control, including additions made through consolidations and purchases, but excluding intangible capital, rights of way and land; provided, however, that for the purposes hereof said depreciation charge to be set aside as aforesaid shall be conclusively presumed to be adequate and the straight-line method for computing same be assumed; and all compensation defined and provided for hereunder is and shall be based upon the assumption that said depreciation charges are adequate. But should the United States at the close of the period of Federal control acquire the ownership of the property, it is understood that the adequacy of this depreciation charge shall be regarded as an open question.

(c) The Postmaster General shall further make provision for the amortization of intangible capital, right of way and land, and debt discount, including additions to those accounts because of additions as aforesaid to the property during the period of Federal control, upon a basis substantially equal to the established practice of the owner prior to Federal control.

(d) The amounts so set aside shall be credited in monthly installments in accordance with the present established practice of the owner.

(e) The charges affecting construction, maintenance, depreciation, reserves for accrued depreciation and amortization of landed and intangible capital and for the amortization of debt discount shall dur-

ing Federal control be made according to the system of accounts prescribed by the commission.

(f) The reserves for amortization of intangible capital, right of way and land, and for the amortization of debt discount, set up as aforesaid, together with any balance remaining in the depreciation reserve (set up and created as aforesaid), shall first be expended by the Postmaster General for additions, approved by the owner, to the property as and to the extent needed. If such expenditure does not absorb said reserves and balance, then the Postmaster General may divert and use such remaining portion for such purpose as he sees fit, and the United States shall thereupon and thereby become obligated to pay an amount equal to the sum so diverted and used to the owner at the end of the period of Federal control without interest.

SECTION V.—OWNER'S RIGHT TO INSPECT.

(a) The owner shall have the right to inspect its property at all reasonable times during the period of Federal control, and the Postmaster General shall provide reasonable opportunities for such inspection, but such inspection shall not interfere with the operation of the property.

(b) The owner shall have the right at all reasonable times to inspect the books and accounts kept by the Postmaster General relating to the property of the owner or to the operation thereof, and the Postmaster General shall during the period of Federal control furnish to the owner periodically copies of operating reports relating to its property, and as soon as practicable after the end of each fiscal year, the statistical data for such year substantially as heretofore compiled.

SECTION VI.—INJURIES TO EMPLOYEES, ETC.

During the period of Federal control, and until the Postmaster General shall inaugurate a different plan, the owner's plan or practice for compensating employees on account of injury, disability, and death shall be continued. The Postmaster General shall, until the inauguration of such new plan, pay the expense of continuing and administering the present plan or practice, and shall pay any and all amounts upon the terms provided in the present plan or practice for compensating employees as aforesaid.

SECTION VII.—TAXES AND RENTALS.

(a) The owner shall, before they become delinquent, pay all taxes, license fees, and charges (and the expenses of suits in respect thereof), which can or may be lawfully imposed during the period of Federal control by Federal or other governmental authority upon any part of the property described in Section II, hereof, and also

such other taxes, license fees, and charges as during the period of Federal control become the obligations of the owner.

(b) The owner shall render bills to the Postmaster General for such taxes, license fees, and charges as the same are paid, which bills shall be accompanied by receipts of the proper tax collecting officials and shall be paid by the Postmaster General within five days after their rendition, except that said bills shall not include, and the Postmaster General shall not pay to the owner, the portion of such taxes, license fees, and charges properly apportionable to property not taken under Federal control and to the revenue from said last-mentioned property.

(c) If any such tax, license fee, or charge is for a period which began before July 31, 1918, or rontinues beyond the period of Federal control, such portion of such tax, licence fee, or charge
41 as may be apportionable to the period of Federal control shall be paid by the Postmaster General and the remainder shall be paid by the owner. Whenever a period for which a tax, license fee, or charge is imposed can not be definitely determined, so much of such charge as is payable in any calendar year shall be treated as imposed for such year.

(d) During the period of Federal control the Postmaster General shall pay all rentals for property used in the operation of the property of the owner.

(e) Said taxes and rentals shall be allocated between the expenses of operation and capital accounts in accordance with the accounting rules prescribed by the commission.

SECTION VIII.—ADDITIONS TO THE PROPERTIES.

(a) Such additions to the telephone property of the owner's system as may be desired by the Postmaster General and approved in writing by the owner as necessary in order reasonably to provide for the public requirements, giving priority to such requirements for purposes directly relating to the prosecution of the war (including in the word "additions" those made by consolidations or purchases), shall be made (1) by investing the reserves set up for amortization and the unexpended balance of the reserves for accrued depreciation; and after said funds have been exhausted, (2) by investing the proceeds of the issue and sale of securities by the owner, if such sale can be made at reasonable prices: Provided, however, That in case of expenditures made for such additions from funds received from the sale of securities, only four-fifths of the cost of such additions shall be paid from such funds, the Postmaster General agreeing to provide the remaining one-fifth of such cost; or (3) wholly out of funds furnished by the United States. The title to all such additions made in accordance with items (1) and (2) above shall immediately vest in the owner.

(b) Any amounts which the Postmaster General may contribute to or pay for the cost of such additions shall be repaid to him by the owner in twenty (20) equal annual installments; payable, the first installment one year after the expiration of Federal control and subsequent installments annually thereafter until all are paid, with interest from the date of the end of Federal control at the rate of five per rent (5%) per annum, payable annually upon all unpaid balances.

(c) The character, plan, and design of such additions shall be approved by the Postmaster General and the owner. On the
42 15th day of each month the Postmaster General shall render to the owner accurate statements of the cost of all material and labor furnished by him for account of the owner for such construction during the preceding month, which statements shall be based upon and be in accordance with the accounting rules and classifications prescribed for the owner by the commission as existing on July 31, 1918, and as from time to time amended. Upon such accounts there shall be credited any amounts then due and unpaid from the Postmaster General on account of the reserves provided for in paragraph (b) of Section IV, and the balance remaining shall be paid to the Postmaster General on or before the 15th day of the succeeding month.

(d) The owner shall not be required in the first instance to furnish funds for additions not approved by the owner. At the end of Federal control the value of each addition not approved by the owner, for the future use of the owner, shall be appraised by the commission, and at the end of Federal control, but not prior thereto, the title to each of such additions shall pass to the owner, and the amount determined to be its value shall be paid to the Postmaster General by the owner in twenty (20) equal annual installments, payable, the first installment, one year after the expiration of Federal control, and subsequent installments annually thereafter until all are paid, with interest from the date of the end of Federal control at the rate of five per cent (5%) per annum, payable annually upon all unpaid balances.

SECTION IX.—PAYMENTS TO OWNER.

(a) The Postmaster General shall pay to the owner for each year, and pro rata for each fractional part of a year, during the period of Federal control, an amount equal to the sum of the following four items: (1) The annual interest on all outstanding securities and obligations of the owner in the hands of the public; (2) one hundred and twenty-one thousand eight hundred and thirty dollars ($121,830.00); (3) the annual charge for interest and dividends and other costs of securing necessary additional capital for such expenditures as may be made at the request of the Postmaster General; (4) the annual charge for such interest and dividends as the owner may be required to pay on new securities, obligations, or share capital issued for the dis-

charge, conversion, or renewal of present obligations, and for additional interest and charges to secure extension of existing securities or obligations. Any securities or obligation issued by the owner and purchased by and in the hands of trustees shall be treated as outstanding in the hands of the public.

43 (b) The amounts provided for such subdivision (a) hereof shall be paid to the owner in monthly installments on the last day of each calendar month during the period of Federal control, except that installments which have accrued prior to the acceptance of this proposal shall be payable within thirty (30) days after the date of such acceptance; such payments to the owner to satisfy and discharge fully all claims of the owner on account of the amounts so paid.

SECTION X.—RESTRICTIONS ON DIVIDENDS BY OWNER.

The owner shall not declare and pay to its stockholders any dividends in excess of six per cent (6%) on its preferred stock or six per cent (6%) on its common stock annually during the period of Federal control.

SECTION XI.—DEBITS AND CREDITS AS OF AUGUST 1, 1918—ALLOCATION OF ITEMS.

(a) All amounts received by the Postmaster General under paragraph (c) of Section II hereof, and all other amounts, whether received from the owner in cash or collected or realized by the Postmaster General from prepayments and current operating assets belonging to the owner or arising from telephone operations prior to midnight of July 31, 1918, shall be credited by him to the owner; and the Postmaster General shall, to the extent of the cash so received or realized, pay and charge to the owner all expenses arising out of its telephone operation prior to August 1, 1918, and, unless objected to by the owner, may pay and charge to such owner any of such expenses in excess of the cash so received or realized. Balances of the above accounts shall be struck monthly as of the last day of August, 1918, and as of the last day of each calendar month thereafter, on or before the fifteenth day of the next succeeding month, and the cash balance found on such adjustments to be due either party shall be then payable within five days.

(b) Telephone operating expenses and rent deductions shall be allocated with reference to the time when incurred as between the periods prior and subsequent to midnight of July 31, 1918, and between the period of Federal control and the period subsequent thereto, in each instance in accordance with the present established accrual practices of the owner; telephone operating revenues and rent revenues shall be allocated as between the periods prior and subsequent to midnight of July 31, 1918, and as between the period of Federal control and the period subsequent thereto, in each instance in accordance with the present established accrual practices of the owner.

(c) Items included in accounts; (1) number 129, prepaid
44 rents; (2) number 130, prepaid taxes; (3) number 131, prepaid insurance; (4) number 132, prepaid directory expense; and (5) number 133, other prepayments which are subaccounts of account number 128, as prescribed by the commission, shall be allocated as between the periods prior and subsequent to midnight of July 31, 1918, and as between the period of Federal control and the period subsequent thereto, in each instance in accordance with the present established practices of the owner.

(d) There may be used for additions to the owner's property, approved by the Postmaster General, any of the materials and supplies taken over under paragraph (b) of Section II hereof, or purchased by him and held for use in connection with such property, in so far as in his judgment this may be done with due regard to his own requirements. Materials and supplies so furnished shall be charged to the owner at inventory prices in the case of those taken over and at cost in the case of those purchased.

(e) In carrying out of the provisions of paragraphs (a), (b), and (c) of this section, the Postmaster General shall not settle any claim by or against the owner against the objection in writing of the president or any other duly authorized officer of the owner. The conduct of all litigation arising out of such disputed claims or out of operation prior to Federal control shall be in charge of the owner's legal force and the expense thereof shall be paid by the owner, but the Postmaster General shall render to the owner all reasonable assistance in the conduct of such litigation.

SECTION XII.—INTEREST.

All payments to be made by either party under this proposal which are not paid within five days after due shall draw interest from the date of their maturity until paid at the rate of five per cent (5%) per annum.

SECTION XIII.—GENERAL PROVISIONS.

(a) The Postmaster General shall pay, or save the owner harmless from, all expenses incident to or growing out of the possession, operation, and use of the property taken over during the period of Federal control. He shall also pay or save the owner harmless from all judgments or decrees that may be recovered or issued against it and all fines and penalties that may be imposed upon it by reason of any cause of action arising out of Federal control or of anything done or ommitted in the possession, operation, use, or control of its property during the period of Federal control, except judgments or decrees founded on obligations of the owner to the Postmaster General or the United States.

45 (b) The Postmaster General shall save the owner harmless from any and all liability, loss, or expense resulting or incident to any claim made against it growing out of anything done or

ommitted during the period of Federal control in connection with or incident to operation or existing contracts relating to operation, and shall do and perform, so far as is requisite during the period of Federal control for the protection of the owner, all and singular the things of which he may have notice necessary and appropriate to prevent, because of Federal control or by reason of anything done or omitted thereunder, the forfeiture or loss by the owner of any of its property, rights, ordinance rights, or franchises, or of its connecting or other contracts involving a facility of operation. The Postmaster General shall also save the owner harmless from any and all claims for breach of covenant heretofore entered into by it or by any predecessor in title or interest in any mortgages or other instrument in respect of insurance against losses by fire.

Nothing in this or in the preceeding paragraph shall be construed to be an assumption by the Postmaster General of, or to make him liable on, any obligation of the owner to pay a debt secured by a mortgage.

SECTION XIV.—EXPIRATION OF FEDERAL CONTROL.

(a) At the end of the period of Federal control all the property described in paragraphs (a) of section II hereof, and also all additions (including those made by consolidations and purchases) to the property of the owner made during the period of Federal control out of unexpended reserves, out of the proceeds of securities, or otherwise, together with all repairs, renewals, and replacements thereof, shall be returned to the owner in a state of repair and in an operating condition equivalent to that of the owner's telephone system on July 31, 1918.

(b) At the end of the period of Federal control the Postmaster General shall return to the owner an equal quantity and quality of materials and supplies of equal relative usefulness to that of the materials and supplies which he received and to the extent that the Postmaster General does not return such materials and supplies he shall account to the owner for the same at prices prevailing at the end of the period of Federal control. To the extent that the owner may then receive materials and supplies in excess of those delivered by it to the Postmaster General, it shall account for the same at the prices prevailing at the end of the period of Federal control, and the balance shall be adjusted in cash.

46 (c) At the end of the period of Federal control there shall be paid to the owner an amount of money equal to the cash working capital without interest received by the Postmaster General from the owner, and also an amount equal to any other cash and special deposits received by him from the owner at the beginning of the period of Federal control and not theretofore accounted for by him, together with any unpaid interest which may have accrued upon the said other cash and deposits under this proposal. There shall be paid

to the owner any funds created under the provisions of this agreement, except to the extent that such funds may have been properly used under this proposal.

SECTION XV.—ACCEPTANCE.

This proposal, if accepted by the Postmaster General, shall be effective on and from midnight July 31, 1918.

Dated this 23rd day of November, 1918.

DAKOTA CENTRAL TELEPHONE CO.
By J. L. W. ZIETLOW.

Form approved.

(Indorsed:) 4526. (2) State ex rel., Payne, Atty. Gen., et al., vs. Dakota Central Telephone Co., et al. Original answer to complaint. Supreme Court, State of South Dakota. Filed Feb. 5, 1919. E. F. SWARTZ, Clerk.

47 *Reply.*

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL. BYRON S. PAYNE, AS attorney general, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, defendants.

Comes now the plaintiff and in reply to the following portions of the defendants' answer, and without replying to any other part or portion of the said answer, and leaving all such other parts or portions of said answer "deemed to be denied" and in fact denied under the provisions of section 145 of the Revised Code of Civil Procedure of 1903 of this State, says:

I.

In reply to the allegations contained in paragraph VIII of the answer of the defendants to the effect that Exhibit A attached to the answer is a true copy of the Postmaster General's Order No. 2495, made on the 13th day of December, 1918, plaintiff admits the same.

II.

In reply to the allegations contained in paragraph VII of the defendants' answer to the effect that Exhibit B attached to said answer is a true copy of the contract entered into and in force between the Postmaster General and the Dakota Central Telephone Com-

pany; and that the other defendants have entered into contracts of similar form and purport, plaintiff admits the same.

Dated February 11, 1919.

BYRON S. PAYNE,
Attorney General.
OLIVER E. SWEET,
Assistant Attorney General.
P. W. DOUGHERTY,
Attorneys for Plaintiff.

48 STATE OF SOUTH DAKOTA,
County of Hughes, ss:

Byron S. Payne, being first duly sworn, deposes and says that he is the attorney general of the State of South Dakota and is one of the relators in the above-entitled action; that he has read the foregoing reply, understands the same, and knows of his own knowledge that the same is true, except as to those matters stated therein upon information and belief, and as to those matters that he believes it to be true.

BYRON S. PAYNE.

Subscribed and sworn to before me this 11th day of February, 1919.

[SEAL.] H. A. USTRUD,
Notary Public, South Dakota.

Service by copy of the foregoing reply is hereby admitted at Pierre, South Dakota, this 11th day of February, 1919.

E. A. PRENDERGAST,
NULL & ROYHL,
E. M. MORSMAN, JR.,
Attorneys for Defendant.
R. P. STEWART,
United States District Attorney for South Dakota.

49 (Endorsed on back as follows:) 4526. Reply. Supreme Court, State of South Dakota. Filed Feb. 11, 1919. E. F. Swartz, clerk.

50 (Vol. 7.) (Page) 97.

Journal, Supreme Court, State of South Dakota.

32ND DAY.

TUESDAY, FEBRUARY 11, 1919.

Court called at 10 o'clock a. m., all members present and sitting. * * *

STATE, EX REL. PAYNE, ATT'Y. GEN., ET AL.
vs.
DAKOTA CENTRAL TELEPHONE CO. ET AL. } 4526

Called on application for injunction. Argued by counsel and submitted upon the pleadings for final determination.

Recess taken until 1.30 p. m., when session was resumed and argument concluded.

Recess taken until further order of the court.

A true record.

Attest:

E. F. SWARTZ, *Clerk.*

51 S. C. P. C. S. W.

Dissent. J. H. M. E. G. S.

#4526. Granted. "G."

In the Supreme Court, State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL., BYRON S. PAYNE AS attorney general, and John J. Murphy and P. W. Dougherty as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiffs.

vs.

DAKOTA CENTRAL TELEPHONE COMPANY ET AL., DEFENDants.

Original action. Opinion filed March 24, 1919.

52 Byron S. Payne, attorney general; Oliver E. Sweet, assistant attorney general; P. W. Dougherty, attorneys for plaintiffs.

Null & Royhl, Edgar M. Morsman, jr., E. A. Prendergast, attorneys for defendants.

R. P. Stewart, United States attorney for the district of South Dakota.

GATES, J. This is an original action brought by the State on the relation of the attorney general and Board of Railroad Commissioners against four telephone companies operating in South Dakota, viz; The Dakota Central Telephone Company; the Northwestern Telephone Exchange Company; the Nebraska Telephone Company, and the South Dakota State Telephone Company. The complaint alleged in substance that the defendants threatened, and were about to put into effect, certain tariffs and schedules of rates, charges, and regulations governing the transmission of long distance telephone messages between points wholly within the State, contrary to and without compliance with the laws of this State in that behalf; and sought injunction. The answer of the defendants admitted the substantial allegations of the complaint but alleged that they were proceeding in accordance with order No. 2495, issued by the Postmaster General of the United States on December 13, 1918, referred to as bulletin 22, made pursuant to the joint resolution of Congress of July 16, 1918, and the proclamation of the President of the United States of July 23, 1918. The cause was submitted for judgment upon the pleadings.

Much has been said in the briefs about the war powers of Congress and of the President, but we are of the opinion that those questions are beside the issues of this case. In our opinion the determi-
53 nation of this case depends entirely upon the meaning of the second proviso in the joint resolution of July 16, 1918. The parts of the resolution material to this case are as follows:

"That the President during the continuance of the present war is authorized and empowered whenever he shall deem it necessary for the national security or defense to supervise or to take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war, * * *.

"*Provided*, That just compensation shall be made * * *

"*Provided further*, That nothing in this act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems."

It is contended by plaintiff that the term "lawful police regulations" is there used in its broad sense which includes the power of rate regulation. Chesapeake & Potomac Telephone Co. v. Manning, 186 U. S. 238, 46 L. ed. 1144. It is contended by the defendants that such term is there used in its narrow sense as referring simply to the public safety, health, and morals.

Leaving out of consideration for the moment the two exceptions mentioned therein, we may observe that if by that proviso the Congress intended that the States should continue to exercise their undoubted powers to reasonably regulate the intrastate rates and charges of telephone companies, then the power to fix such rates did not pass to the President nor to his representative, the Postmaster General. If by that proviso Congress intended to deprive the States of the power to regulate rates for intrastate messages then, but not until then, we would have to consider the power and authority of Congress so to do.

54 In our opinion Congress intended the former. The act and the proviso should be so construed unless the contrary clearly appears. The contrary should not be assumed by mere implication.

In Reagan v. The Mercantile Trust Co., 154 U. S. 413, 38 L. ed. 1028, the court said:

"It must have been known that, in the nature of things, the control of that business would be exercised by the state, and if it deemed that the interests of the nation and the discharge of the duties required on behalf of the nation from this corporation demanded exemption in all things from state control, it would unquestionably have expressed such intention in language whose meaning would be clear. Its silence in this respect is satisfactory assurance that, in so far as this corporation should engage in business wholly within the

state, it intended that it should be subjected to the ordinary control exercised by the state over such business."

In Reid v. People of the State of Colorado, 187 U. S. 137, 47 L. ed. 108, the court said:

"It should never be held that Congress intends to supersede, or by its legislation suspend, the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested."

So that if the clause in the proviso is ambiguous and needs interpretation the doubt should be resolved in favor of the reserved power of the state. But a consideration of the second exception in the proviso removes, in our opinion, all possible doubt as to the intention of Congress. The material parts of the proviso applicable to the point in question are:

"Nothing in this act shall be construed to amend, repeal, impair, or affect * * * the lawful police regulations of the several states, except wherein such * * * regulations may affect the * * * issue of stocks and bonds by such system or systems."

It cannot be doubted that the power of a state to regulate the issuance of stocks and bonds by corporations created under its authority is a power entirely foreign to and outside of those powers included in the term "police power" when such term is used in its narrow sense as referring to the power to preserve public
55 safety, health, and morals. Therefore, when Congress declared that the "police regulations of the several states" left to the states, should not "affect the issue of stocks and bonds" of telegraph and telephone companies, it is clear that it had in mind reserving to the states "police regulations" which, if unrestricted, might affect the issue of stocks and bonds. Thus Congress has, by the very wording of this proviso declared that it reserved to the states, subject to two limitations, the full police powers that the states possess as sovereign states. The term "lawful police regulations" is therefore self-interpreted by Congress and needs no interpretation by the courts.

It is further urged that the assumption of control and operation imply the taking over of all revenues and that by reason of the taking over of the revenues of the companies Congress intended to assume authority to fix all rates, interstate and intrastate. That contention ignores the second proviso of the resolution. The resolution says nothing about the taking over of the revenues. The provisions of the contracts entered into between the Postmaster General and the telephone company are not persuasive of the correct interpretation of the proviso; but even if the act does contemplate the taking over of all revenues interstate and intrastate, that fact is not entitled to weight in construing the terms of the proviso, because that fact would not at all be inconsistent with its dependency on the right of the states to continue to regulate intrastate rates. Intrastate rates, as well as interstate rates, established under the authority of law, are entitled to the benefit of a presumption that they are fair

and reasonable. How can it be said to be inconsistent with the assumption of the revenues for Congress to declare that such assumption was subject to the reasonable rates lawfully established!

56 It is further urged that by the several steps taken by Congress, by the President and by the Postmaster General, the properties taken over have become the properties of the United States Government unshackled from State authority, and that this action is in reality one against the United States which can not be maintained in this Court because Congress has not given its assent thereto. The answer is that even if the property has become the property of the United States Government, the Government's title thereto is encumbered by the reserved power of the State to regulate intrastate rates. When, therefore, the Postmaster General seeks to promulgate rates, and the defendant telephone company seeks to carry them out, in defiance of the State laws, they are wrong-doers and are amenable to the laws of this State. The action is not one against the United States or its property, but is one seeking to restrain the commission of an authorized act.

In the Minnesota rate cases the Supreme Court of the United States very fully went into the question of what were and what were not suits against the State. Ex Parte Young, 209 U. S. 123, 52 L. ed. 714. That decision is authority for the position which we assert.

We are of the opinion that the injunction sought should be granted, but that it shall provide that it in nowise affects the transmission of governmental communications or the issue of stocks and bonds by the defendants or either of them.

57 McCoy, J., dissenting. (Smith, P. J., concurs in this dissent.)

For reasons hereafter stated I am unable to concur in the majority opinion. The majority opinion states that "much has been said in the briefs about the war powers of Congress and of the President, but we are of the opinion that those questions are beside the issues in this case." All the decisions and authorities cited by the majority are applicable only to ordinary normal peace conditions. As I view the situation, in the interpretation of the said resolution and the effect of the proviso therein, my associates have entirely lost sight of the fact that we have been and now are engaged in a war, and that the President and Postmaster General have been and now are exercising discretionary executive war power for the common defense of our country. The whole meat of the interpretation of said resolution should be based upon the war powers of Congress, and the purposes, spirit, and intent, and the object and ends sought to be accomplished by its enactment. 36 Cyc 1110. Much of the argument of plaintiffs, as disclosed by their briefs, is to the effect that the war, for all legal purposes, closed with the signing of the armistice on November 11, 1918. The resolution of Congress in question expressly provides that the Government may retain possession and control of such telephone systems until the ratification of peace treaties shall have been proclaimed by the President. We should take judicial

notice that no such treaties yet have been proclaimed. Aside from the provisions of the resolution, the general common law rule seems to be that it is the province of the political and not the judicial department of government to determine when war, as a legal status binding upon the courts, commences and ends; that courts can not take judicial cognizance of the fact that war has commenced or
58 ended until there has been some act or declaration by that department of government clothed with war making power. Conley vs. Calhoun Co., 2 W. Va. 406; Bishop vs. Jones, 28 Tex. 319; U. S. vs. Palmer, 3 Wheat. 610; 4 L. ed. 471, 40 Cyc 393. As a matter of notorious common knowledge we should take judicial notice that at the present time no proclamation declaring war at an end has been made by the President or other political department of our Federal Government clothed with such power. We should also take judicial notice that this nation now has on foreign soil a large army; that it is now being supplied at enormous cost; that it is as essential now as before the armistice that our Government have funds necessary to care for its army, transport the same home and demobilize the same in orderly course. Revenues and other war service equipment are as necessary now as before the armistice.

It will be observed that the resolution of Congress, partially quoted in the majority opinion, in substance provided that the President, during the continuance of the present war, was authorized and empowered whenever he should deem it necessary for national security or national defense, to take possession and control of any telephone or telegraph systems and operate the same in such manner as might be needful. Needful for what? The only answer is for war purposes. On July 22, 1918, acting under said resolution, the President by proclamation took over into war service the possession and control of each and every telephone system within the jurisdiction of the United States, and placed them under the immediate supervision and control of the Postmaster General, who was thereby authorized and empowered to act in the premises for and on behalf of the President. Thereafter, on July 31, 1918, the President, acting by and through the Postmaster General, took actual physical possession and control of all said telegraph and telephone systems, including the properties theretofore owned, controlled and
59 operated by the defendants within this State, and from thence thereafter the possession, control and operation of said telephone systems have been and now are under exclusive federal control, and defendants have not now any pecuniary interest in the revenues, disbursements, profits or losses of said defendant corporations. Thereafter on December 13, 1918, the Postmaster General, by order, prescribed the intrastate rates to be in force during the period of Federal control on all telephone systems, including those of defendants, which materially increased the intrastate rates theretofore existing within this State. The defendants claim that they intend to apply said proposed intrastate rates only because ordered and directed so to do by the Postmaster General. In promulgating

and establishing said order prescribing said increased intrastate rates, the President, through the Postmaster General, claims to be exercising an executive discretion legally confided in him by the laws of the United States, during the war, as a war measure, and which discretion is not subject to judicial control or interference, and to all which the powers and authorities of the several States and their officers are subordinate. By said resolution, it clearly appears that discretionary executive power was confided in the President to take over for war purposes the entire system of the telephone corporations, including the appurtenant rights to fix rates of compensation that should be paid by the public for service or use thereof; in other words, the President, if he deemed it needful, was empowered to impress into war service, not only the entire equipment, property, officers, agents and employees of said corporations, but also the use and revenues thereof, and any and all other means of every nature appertaining to and possessed by said telephone systems whereby the common defense of the country might be benefited and made more secure. When said telephone systems were taken over by the Government for such war purposes, incidentally, and as an inherent part thereof, the capacity of said systems to produce revenues was also taken over to be used by the President as he might deem needful for common defense. The power of impressment is defined to be that possessed by a government in taking persons or property to aid in defense of the nation with or without the consent of the persons concerned. In this instance, after said taking, many of the telephone corporations consented to the said impressment into war service by contracts made with the Government, while some did not consent thereto; but whether such corporations so consented or not, the effect of the taking over was the same in either case. The impressment into such war service of the use, and the means to thereby obtain revenues from the public, were just as needful and as essential for war purposes as any other use to which the Government might desire to put said telephone systems. From the time of so taking over of said telephone systems they became to all legal intents and purposes the same as if the Government of the United States was and always had been the sole and absolute owner thereof, together with all the incident appurtenant powers of such ownership. When they were so taken over they became completely unshackled from State authority, and thereafter, neither the State, nor its board of railway commissioners, had any further power or jurisdiction over the same, any more than they had over any other solely owned operated and controlled Federal property. When said telephone systems so went into the hands of the Postmaster General, the same and all their various powers and functions, ceased completely to be subject to the police power of this State, otherwise the Federal Government might thereby be hindered and delayed in what it deemed proper and needful war purpose measures. The laws of this State relating to the fixing of intrastate telephone rates never did and do not now apply to United States owned, operated and con-

trolled property. The fact of so taking over said telephone
61 systems and the fixing of increased intrastate rates in no manner conflicts with, repeals or impairs the force and effect of the police power of this State, but such taking over had the effect of removing said systems entirely out of and from under the jurisdiction of the State civil law. The State civil law is as effective now as ever as to property and persons over which it has jurisdiction, but property which has passed under the military jurisdiction of the President is not a subject of police regulation under the State civil law. If the Federal Selective Draft Act, of May 18, 1917, had contained a proviso that nothing in that act should be construed to amend, repeal or impair or effect existing laws or power of the States in lawful police regulation, could any one successfully contend that individuals who had been drafted into war service, on the eve of battle or embarkation, might be imprisoned for violating some civil State police regulation; would it not be held that the drafted person had been taken out of the jurisdiction of the civil law and, for the time being, made amenable only to military law; that no State law had been thereby repealed or impaired as to persons not drafted into Federal war service; would it not be properly held that any other holding would thwart, hinder or delay the very war object for which the soldier had been impressed or drafted into service? Now the Government has impressed private property for the same war purposes. Is it not for the executive department, whose duty it is to prosecute the war, to determine what particular use shall be made of the impressed private property just the same as it may determine what use shall be made of the impressed soldier? Efficient war service was the purpose—the primary object for which the said resolution of Congress was enacted. It authorized the complete taking over of telephone systems. After the same were so taken over it was the province and the duty of the executive department,
clothed with power to prosecute the war, to determine what
62 war purpose use should be made thereof. If such executive department in its discretion determined that it was a necessary and needful war measure to increase the intrastate rates, it was within its executive discretion to do so, otherwise the very war object for which it was taken over might be hindered and delayed and entirely thwarted by civil law courts. The power to determine what use or purpose should be made of said telephone systems and whether or not this thing, that, or the other, was a proper war measure, was within the discretionary military executive jurisdiction of the President as commander in chief of the Army and Navy. When discretionary military power to take over telephone systems, as a part of the process of conducting the war, was so placed in the hands of the President, it then became his lawful province to interpret those powers. Now, in interpreting and construing said power the President, through the Postmaster General, has decided and determined that the said increase in intrastate telephone rates is a proper war measure. I am of the view that such interpretation is supreme and

paramount to any other interpretation that might be made by any civil court. It seems to be well settled that when a state of war exists the exercise of discretionary military power and authority can not be controlled or interfered with by civil courts, unless where it is clearly made to appear that the acts, assumed to be done by virtue of such military power, are in excess and entirely outside of any reasonable military purpose for which the power was given or might be exercised. State vs. Burton, 103 Atl. 962. In re Wulzen, 235 Fed. 362. Druecker vs. Salomon, 21 Wis. 631, 94 Am. Dec. 571. Marbury vs. Madison, 1 Cranch 137, 34 L. Ed. 60. Within its sphere each particular department of the Federal Government, legislative, executive, and judicial, is supreme and paramount. In re Quarles, 158 U. S. 535. These telephone systems having be-
63 come, during the period of the war, Federal property in the hands and under the control of the executive department, the decisions of that department with reference thereto are paramount to that of any other department. In speaking of the exercise of authority essential to be exercised in relation to the common defense, at the time of the creation of our Federal Constitution, Hamilton most appropriately said:

"The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils which are appointed to preside over the common defense." Vol. 10, Sec. Ed. Fed. Stats. Ann., p. 300.

Under well-known general rules statutes should be construed in the light of and so as to give full force and effect to the purposes and objects which brought about their enactment.

"Every statute must be construed with reference to the object intended to be accomplished by it. In order to ascertain this object it is proper to consider the occasion and necessity of its enactment, * * * and the statute should be given that construction which is best calculated to advance its object." 36 Cyc. 1110.

The President having been authorized to completely take over said telephone systems for military purposes, it would seem to necessarily follow that he alone, as the person appointed to preside over the common defense, should determine what war uses should be made thereof. I am of the view that the general rule announced by this court in State vs. Express Company, 170 N. W. 570, to the effect that an

executive officer of state, such as the President, or governor, is not subject to the control or interference of the judiciary in the performance of discretionary duties belonging to him as such officer,
64 and that no act done or threatened to be done by him in his official executive capacity can be brought under judicial control or interfered with by mandamus or injunction.

Therefore I am of the view that the application of plaintiffs for injunction should be denied.

(Indorsed:) 4526. State ex rel., Payne et al., plaintiffs, vs. Dakota Central Telephone Co. et al., defendants. Original proceeding. Injunction granted. Gates, J. Smith, P. J., and McCoy, J., dissenting. Supreme Court, State of South Dakota. Filed Mar. 24, 1919. E. F. Swartz, clerk.

65 *Certificate of service of judgment.*

F–652.

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA EX REL., BYRON S. PAYNE AS Attorney General and John J. Murphy and P. W. Dougherty as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, North Western Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, defendants.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

I, Henry Walker, deputy sheriff of Hughes County, South Dakota, do hereby certify and return that the annexed judgment of the Supreme Court in the above-entitled action dated March 24, 1919, came into my hands for service upon the 26th day of March, 1919; and that I served the same upon the defendant Nebraska Telephone Company by delivering to and leaving with C. A. Burkhart, secretary of state of the State of Dakota, at his office in the capitol building in the city of Pierre, Hughes County, South Dakota, on the said 26th day of March, 1919, two copies thereof in exact duplicate, as certified by the clerk of the Supreme Court of the State of South Dakota, under his seal to be a true, correct, and complete copy of the original of said judgment; and that I know the said C. A. Burkhart to be secretary of state of the State of South Dakota, and as such to be the resident agent of the said defendant Nebraska Telephone Company, a foreign corporation, upon whom

service of process directed to the said defendant may be made in this State.

Dated this 26th day of March, 1919.

H. N. WALKER,
Deputy Sheriff.

66 *Certificate of service of judgment.*

F-652.

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA EX REL., BYRON S. PAYNE AS Attorney General and John J. Murphy and P. W. Dougherty as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, North Western Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, defendants.

STATE OF SOUTH DAKOTA, *County of Hughes, ss:*

I, Henry Walker, deputy sheriff of Hughes County, South Dakota, do hereby certify and return that the annexed judgment of the Supreme Court in the above-entitled action dated March 24, 1919, came into my hands for service upon the 26th day of March, 1919; and that I served the same upon the defendant North Western Telephone Exchange Company by delivering to and leaving with C. A. Burkhart, secretary of state of the State of South Dakota, at his office in the capitol building in the city of Pierre, Hughes County, South Dakota, on the said 26th day of March, 1919, two copies thereof in exact duplicate, as certified by the clerk of the Supreme Court of the State of South Dakota, under his seal to be a true, correct, and complete copy of the original of said judgment; and that I know the said C. A. Burkhart to be secretary of state of the State of South Dakota, and as such to be the resident agent of the said defendant North Western Telephone Exchange Company, a foreign corporation, upon whom service of process directed to the said defendant may be made in this State.

Dated this 26th day of March, 1919.

H. N. WALKER,
Deputy Sheriff.

67 *Certificate of service of judgment.*

F—652.

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL., BYRON S. PAYNE, AS attorney general, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION; North Western Telephone Exchange Company, a corporation; Nebraska Telephone Company, a corporation; and South Dakota State Telephone Company, a corporation, defendants.

STATE OF SOUTH DAKOTA,
County of Brown, ss:

I, H. L. Elliott, sheriff of the county of Brown, State of South Dakota, do hereby certify and return that the annexed and foregoing judgment made by the Supreme Court of the State of South Dakota in the above entitled action on the 24th day of March, 1919, came into my hands for service on the 27 day of March, 1919, and that I served the same upon the defendant, Dakota Central Telephone Company, by delivering to and leaving with W. G. Bickelhaupt personally at Aberdeen, in the county of Brown, South Dakota, on the said — day of March, 1919, a copy thereof, certified by the clerk of the Supreme Court of the State of South Dakota, under his seal to be a true, correct, and complete copy of the original of said judgment; and that I know the said W. G. Bickelhaupt to be sec. & treasurer of the said defendant company.

Dated this 27 day of March, 1919.

H. L. ELLIOTT,
Sheriff.

By J. C. WOOD,
Deputy Sheriff.

68 *Certificate of service of judgment.*

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL, BYRON S. PAYNE, AS attorney general, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION; North Western Telephone Exchange Company, a corporation; Nebraska Telephone Company, a corporation; and South Dakota State Telephone Company, a corporation, defendants.

STATE OF SOUTH DAKOTA,
County of Minnehaha, ss:

I, Herman Wangsness, sheriff of the county of Minnehaha, State of South Dakota, do hereby certify and return that the annexed and foregoing judgment made by the Supreme Court of the State of South Dakota in the above-entitled action on the 24th day of March, 1919, came into my hands for service on the 27th day of March, 1919, and that I served the same upon the defendant, South Dakota State Telephone Company, by delivering to and leaving with M. L. Lane personally at Sioux Falls, in the county of Minnehaha, South Dakota, on the said 27th day of March, 1919, a copy thereof, certified by the clerk of the Supreme Court of the State of South Dakota under his seal to be a true, correct, and complete copy of the original of said judgment; and that I know the said M. L. Lane to be president of the said defendant, South Dakota State Telephone Company.

Dated this 27th day of March, 1919.

HERMAN WANGSNESS,
Sheriff.

By JULIUS WOLD,
Deputy Sheriff.

Judgment.

69 In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL., BYRON S. PAYNE, AS attorney general, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiff,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION; North Western Telephone Exchange Company, a corporation; Nebraska Telephone Company, a corporation; and South Dakota State Telephone Company, a corporation, defendants.

This cause came on regularly for trial before the court on the 11th day of February, 1919, upon the complaint of the plaintiff, the answer of the defendants, and the reply of the plaintiff to the defendant's answer; the plaintiff appeared by Byron S. Payne, attorney general; Oliver E. Sweet, assistant attorney general; and P. W. Dougherty, its attorneys, and the defendants appeared by Thomas H. Null and Edgar M. Morsman, jr., their attorneys, and by Robert P. Stewart, United States district attorney; the cause was submitted for final determination upon the pleadings; the court heard the arguments of counsel; and the court having fully considered the same and being fully advised in the premises and having on this date made and filed its opinion, setting forth its conclusion that the permanent injunction prayed for by the plaintiff should be granted; now, therefore, on motion of Byron S. Payne, Oliver E. Sweet, and P. W. Dougherty, attorneys for the plaintiff,

It is hereby ordered, adjudged, and decreed that the Dakota Central Telephone Company, a corporation; the Northwestern Telephone Exchange Company, a corporation; the Nebraska Telephone Company, a corporation; and the South Dakota State Telephone Company, a corporation, the above-named defendants, and each of them, the officers, agents, employees, servants, attorneys, and representatives of the said defendants and of each of them, and all persons acting for, or on behalf of, or aiding or assisting them, or either of them, be, and they are and each of them is, hereby permanently enjoined

70 and restrained from charging, demanding, collecting or receiving and from making effective in any manner for the transmission of long distance or toll telephone messages between any points or stations on the lines of the said defendant telephone companies, or either of them, wholly within the State of South Dakota, any of the rates, fares, charges, rules, regulations, or classifications described in the complaint, and which the defendant telephone companies proposed to put into effect in this State on January 21, 1919, and which are more particularly described and specified in General

Order No. 2495, issued by Albert S. Burleson, Postmaster General of the United States, on December 13, 1918, otherwise known as Telegraph and Telephone Service Bulletin No. 22; and,

It is further ordered, adjudged, and decreed that the said Dakota Central Telephone Company, a corporation; Northwestern Telephone Exchange Company, a corporation; Nebraska Telephone Company, a corporation; and South Dakota State Telephone Company, a corporation, the above-named defendants and each of them, the officers, agents, employees, servants, attorneys, and representatives of the said defendant telephone companies or either of them, and all persons acting for and on behalf of, or in any wise aiding or assisting them, or either of them, be, and they are, and each of them is, hereby permanently enjoined and restrained from charging, demanding, collecting, or receiving and from making effective in any wise for the transmission of long distance or toll telephone messages over lines of the said defendant telephone companies, or either of them, between points or stations wholly within the State of South Dakota, any rates, fares, charges, or any rules, regulations or classifications of the long distance or toll telephone service, or any compensation whatever for such long distance or toll telephone service wholly within the State of South Dakota, higher than or in excess of the rates, fares, rules, regulations, classifications, and compensation now in effect or that may hereafter be regularly adopted and established by the said defendant telephone companies, or any of them, with the approval and consent of the Board of Railroad Commissioners of the State of South Dakota, pursuant to the statutes of said State in such case made and provided; provided, however, that this judgment shall not operate to enjoin or restrain the said defendant telephone companies, or
71 either of them, from charging and collecting, or from otherwise making effective such rates, fares, or compensation or such rules, regulations, or classifications as are now or hereafter may be established by the said defendants or by the Government of the United States for the transmission of Government communications by the use of long distance or toll telephone equipment between points within the State of South Dakota.

Dated at the city of Pierre, the capital, in Hughes County, South Dakota, this 24th day of March, 1919.

By order of the Court:

[SEAL.]

E. G. SMITH,
Presiding Judge.

Attest:

E. F. SWARTZ,
Clerk of the Supreme Court.

(Indorsed:) 4526. (5) State of South Dakota ex rel., Payne, Atty. Gen. et al, *vs.* Dakota Central Telephone Co. et al. Judgment. Supreme Court, State of South Dakota. Filed March 24, 1919. E. F. Swartz, *Clerk.*

72 *Petition for writ of error to the Supreme Court of South Dakota.*

In the Supreme Court of South Dakota.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, plaintiffs in error,

vs.

STATE OF SOUTH DAKOTA, EX REL., BYRON S. PAYNE, AS Attorney General, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, defendant in error.

To the honorable, the Chief Justice of the Supreme Court of the State of South Dakota:

The petition of the Dakota Central Telephone Company, a corporation, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, respectfully shows:

1. Your petitioners, who are the plaintiffs in error herein and were defendants in the court below, are now and at all the times hereinafter mentioned, were severally telephone companies duly authorized to conduct local and long distance telephone operations in the State of South Dakota, being corporations as stated in the pleading in said case.

2. The defendant in error herein, the State of South Dakota, was plaintiff in the court below, and heretofore and on or about the 21st day of January, 1919, filed a suit in the Supreme Court of South Dakota, having original jurisdiction thereof under the laws of said State, on the relation of Byron S. Payne as Attorney General of said State, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners, for an injunction to

73 enjoin your petitioners from putting into effect the toll rates prescribed by an order of the Postmaster General, Albert S. Burleson, being his order No. 2495 (Bulletin No. 22) so far as the same affected intrastate long distance or toll telephone messages. The case was submitted for final determination by said Supreme Court of South Dakota upon the pleadings.

3. Said suit involves a contest between the State of South Dakota and your petitioners, acting for and under the President of the United States in his administration through Albert S. Burleson, Postmaster General, of the telephone systems of petitioners in the possession, supervision, control, and operation by the President under

the joint resolution of Congress of July 16, 1918, and under the proclamation of July 22, 1918, of the President of the United States, assuming the possession, supervision, control, and operation of each and every telephone system in the United States and every part thereof including those of petitioners, and directing that the same be taken and exercised by said Postmaster General. Pursuant to that direction said Postmaster General entered upon the discharge of his duties thereunder on August 1, 1918.

4. The complaint alleges that the only lawful intrastate telephone toll rates are those which were duly on file with said board prior to August 1, 1918; that under the laws of South Dakota and the lawful rules and regulations of said board, such intrastate rates can be increased only upon application to and approval of said board, and that the classifications, rules, regulations, and practices pertaining to said rates can be changed only in the same manner; that the laws of the State and lawful orders of the said board are not suspended as to such systems under Federal control during the period of Federal control, but remain in full force and effect; and that the petitioners will, unless restrained by the court, establish and put into effect as of January 21, 1919, new schedules or tariffs of rates, rules, regulations, and classifications as set forth in the Postmaster General's said order, in reliance upon the authority of the said joint resolution of Congress, proclamation of the President, and order of the Postmaster General, which will greatly increase the existing rates for toll messages and for services in connection therewith
74 wholly between points within the State of South Dakota without notice or application to said board or its approval and contrary to the laws of the State.

5. With respect to this claim of authority so asserted by petitioners, the complaint alleges that it is an invalid claim of authority for the reason a proviso of the joint resolution reserves to and leaves unimpaired in the States and in the State of South Dakota full jurisdiction and authority over intrastate rates, and therefore the threatened action of your petitioners would be in violation of law.

6. Your petitioners assert and allege that the authority and jurisdiction of complainants was superseded and suspended by the joint resolution of Congress and the action of the President and Postmaster General pursuant thereto, that the President through the Postmaster General has full power and authority to fix and regulate all telephone rates, including intrastate rates during the period of Federal control which has not expired, and that the State of South Dakota is wholly without authority or jurisdiction until Federal control is duly terminated by law; that your petitioners are merely the agents of the President and the Postmaster General and are agencies and instrumentalities of the United States; that they were ordered to put the new rates and schedules into effect and are and were without discretion in the matter; that the revenues to be derived therefrom and all operating revenues of said systems belong to the United States and your petitioners have no interest therein.

7. Petitioners set up in their answer that the suit is, in legal effect, one against the United States without its consent.

8. The matter was duly submitted to the supreme court of South Dakota, and that court on March 24, 1919, adjudged and decreed that the injunction issue against your petitioners as prayed, and that the suit is not against the United States, but is one against the several corporations to restrain the commission of an act not authorized under the laws of the United States and which would be in violation of the laws of the State, and decided against the authority in said
75 Postmaster General under said joint resolution of Congress and in favor of the validity of the statutes of the State of South Dakota.

9. That in and by said suit there was drawn in question the validity of a statute of, and an authority exercised under, the United States and said decision was against their validity; and there was drawn in question the validity of a statute of, and an authority exercised under, the State of South Dakota on the ground of their being repugnant to the Constitution and laws of the United States and the decision was in favor of their validity.

10. That the decision, judgment, and decree so rendered and filed by the supreme court of South Dakota were final in a suit in the highest court of the State of South Dakota and were unwarranted in law as plaintiffs in error are advised.

11. Petitioners present herewith an undertaking in due form as required by law, and an assignment of errors, and pray that a writ of error be allowed so as to have a review of said decision, judgment, and decree of the supreme court of South Dakota in the Supreme Court of the United Ctates, and that a citation issue in due form and course to require the defendant above named to appear to said writ of error and to show cause why the error should not be corrected as provided by law and the rules of this court.

DAKOTA CENTRAL TELEPHONE COMPANY,
NORTHWESTERN TELEPHONE EXCHANGE COMPANY,
NEBRASKA TELEPHONE COMPANY,
SOUTH DAKOTA STATE TELEPHONE COMPANY,
Petitioners,

By EDGAR M. MORSEMAN, Jr.,
Attorney for Petitioners.

Robert P. Stewart, United States District Attorney; Null and Royhl, E. A. Prendergast, Edgar M. Morseman, jr., attorneys for petitioners.

Writ of error allowed, as prayed, upon giving good and sufficient security as required by law for the sum of one thousand dollars ($1,000).

Dated this 5th day of April, 1919.

ELLISON G. SMITH,
Presiding Judge of the Supreme Court of the State of South Dakota.

(Indorsed:) 4526. (1) Dakota Central Telephone Co., et al., plaintiffs in error, vs. State ex rel. Payne, Atty. Gen., &c. et al., defendants in error. Petition for writ of error to Supreme Court. Order alowing writ. Supreme Court, State of South Dakota. Filed Apr. 5, 1919. E. F. Swartz, clerk.

76 *Assignment of errors.*

In the Supreme Court of the United States.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, Plaintiffs in Error.

vs.

STATE OF SOUTH DAKOTA, EX REL., BYRON S. PAYNE, as Attorney General, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, Defendants in Error.

Come now, the plaintiffs in error, Dakota Central Telephone Company, a corporation, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, and aver that the decision, judgment, and decree rendered by the Supreme Court of South Dakota herein on March 24, 1919, is erroneous and against the rights of plaintiffs in error; and at the time of presenting their petition for a writ of error to review the same file therewith this their assignment of errors:

1. That the Supreme Court of South Dakota erred in holding that the suit is not one against the United States without its consent.

2. That said court erred in holding that "the action is not one against the United States or its property, but is one seeking to restrain the commission of an unauthorized act."

77 3. The Supreme Court of South Dakota erred in holding that "the determination of this case depends entirely upon the meaning of the second proviso in the joint resolution of July 16, 1918."

4. The Supreme Court of South Dakota erred in holding that the term "lawful police regulations" in the second proviso of the said joint resolution of July 16, 1918, is used therein in the broad sense which includes the power of rate making.

5. The Supreme Court of South Dakota erred in holding that, under and by virtue of the joint resolution of Congress of July 16, 1918, the power to fix intrastate rates and charges of telephone sys-

tems of which the President had assumed the possession, supervision, control, and operation, was not vested in the President, or his representative, Albert S. Burleson, Postmaster General.

6. Because said court erred in holding that the action of the Board of Railroad Commissioners of South Dakota in attempting to control or interfere with the rates prescribed by the Postmaster General acting under the authority of the President is the exercise of the police power of the State of South Dakota.

7. Because said court erred in holding that the police regulations of the State of South Dakota extend to or affect schedules of toll rates for telephone service promulgated by the Postmaster General as alleged in this case, and in not holding that said regulations are not authorized by said proviso to said resolution of July 16, 1918.

8. Because said court erred in not holding that the police power of the State of South Dakota and police regulations
78 affecting telephone rates can only apply to and affect such rates when made or charged by a private individual or corporation conducting a telephone business for the public service, and that such police power or regulations do not extend to or include the regulation of tolls made or charged by the Government of the United States or its officers acting under its authority.

9. The Supreme Court of South Dakota having held that the statutes of South Dakota pertaining to the regulation and control of telephone rates, and conferring upon the said Board of Railroad Commissioners jurisdiction over them, applied to rates made by the Postmaster General in the operation under the said joint resolution of July 16, 1918, of the telephone systems of plaintiffs in error while in the possession and control of, and being operated by, the Postmaster General pursuant to the President's proclamation of July 22, 1918, said Court erred in not holding that said statutes so construed were in conflict with said joint resolution and were superseded thereby as to said rates so made by said Postmaster General.

10. The Supreme Court of South Dakota erred in holding that the statutes of the State of South Dakota conferred upon the said Board of Railroad Commissioners any jurisdiction to regulate or fix intrastate telephone rates to be charged by the President while operating the telephone systems of the plaintiffs in error under the joint resolution of July 16, 1918, because said statutes so construed were in conflict with said resolution.

11. The Supreme Court of South Dakota erred in holding
79 that the Postmaster General's toll rate order No. 2495 was in violation of any "lawful police regulation" of the State of South Dakota within the meaning of that term in the said joint resolution of Congress of July 16, 1918, and enjoining the execution of said order No. 2495 upon that ground.

12. The Supreme Court of South Dakota erred in failing and refusing to decide and find that the South Dakota State Railway

Commission has been granted by the legislature no control over telephone systems operated by the Federal Government.

13. The Supreme Court of South Dakota erred in granting the injunction.

14. The Supreme Court of South Dakota erred in granting the injunction with the proviso "that it in no way affects the transmission of governmental communications or the issue of stocks and bonds by the defendants or either of them, and is therefore within the interdiction of the exception to the proviso of the said joint resolution."

15. The Supreme Court of South Dakota erred in failing and refusing to adjudge and decree, as prayed by plaintiffs in error, that the defendants, their officers, agents and servants are during the period of Federal control, the officers, agents and servants of the United States, and as such are subject only to the Orders, Direction and Control of the Postmaster General and of the President of the United States.

16. The Supreme Court of South Dakota erred in failing and refusing to adjudge and decree, as prayed by plaintiffs in
80 error, that the acts of the Postmaster General in promulgating said classifications and schedules of rates are the lawful exercise of authority conferred upon him by the laws of the United States and the proclamation of the President, and that it is the duty of the defendants as officers, agents and servants of the United States to apply and enforce such classification and rates during the period of Federal control.

WHEREFORE, plaintiffs in error pray that said errors be corrected, and that said decision, judgment and decree be reversed, and said bill of complaint be dismissed with costs.

Dated this fifth day of April, 1919.

DAKOTA CENTRAL TELEPHONE COMPANY,
NORTHWESTERN TELEPHONE EXCHANGE COMPANY,
NEBRASKA TELEPHONE COMPANY,
SOUTH DAKOTA STATE TELEPHONE COMPANY,
Plaintiffs in Error.

By EDGAR M. MORSEMAN, Jr.,
Attorney for Plaintiffs in Error.

Robert P. Stewart, United States district attorney; Null and Royhl, E. A. Prendergast, Edgar M. Morsman, jr., attorneys for plaintiffs in error.

(Indorsed:) 4526. (2) Dakota Central Tel. Co. et al., Plaintiff in Error, vs. State ex rel., Payne, Atty. Gen., et al., Defendants in Error. Assignment of Errors. Supreme Court, State of South Dakota. Filed Apr. 5, 1919. E. F. Swartz, Clerk.

81 In the Supreme Court of the United States.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, plaintiffs in error,

vs.

STATE OF SOUTH DAKOTA EX REL., BYRON S. PAYNE, AS Attorney General, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, defendant in error.

Whereas on the 24th day of March, 1919, the Supreme Court of South Dakota made and entered its final judgment and decree in favor of the State of South Dakota, the above-named defendant in error, and against the Dakota Central Telephone Company, Northwestern Telephone Exchange Company, Nebraska Telephone Company, and the South Dakota State Telephone Company, the above-named plaintiffs in error, wherein it adjudged and decreed that said plaintiffs in error and each of them be permanently enjoined from promulgating, charging, and collecting in the State of South Dakota, the schedules, classifications, and rates for intrastate telephone messages set forth and provided in the order of the Postmaster General, Albert S. Burleson, referred to and set forth in the complaint of the State of South Dakota in said action; and

Whereas the above-named Dakota Central Telephone Company, Northwestern Telephone Exchange Company, Nebraska Telephone Company and the South Dakota State Telephone Com-
82 pany, plaintiffs in error, seek to prosecute a writ of error in the Supreme Court of the United States to reverse the said judgment and decree of the Supreme Court of South Dakota:

Now, therefore, the undersigned, American Surety Company, a corporation of the State of New York, does hereby undertake that the said plaintiffs in error shall prosecute their writ of error to effect, and if they fail to make good their plea, to answer all damages and costs that may be adjudged against them and each of them, not exceeding the sum of one thousand dollars ($1,000).

In witness whereof, the said American Surety Company has caused this undertaking to be executed and its seal attached this first day of April, 1919.

[SEAL.] AMERICAN SURETY COMPANY OF NEW YORK.

By MARSHALL L. BROWER,

Resident Vice President.

Attest:

W. J. SPALCKHAVER,

Resident Assistant Secretary.

Approved this 5th day of April, 1919, by:

E. G. SMITH,
Presiding Judge of the Supreme Court of South Dakota.

82½ STATE OF NEW YORK, *County of New York, ss:*

On this 1st day of April, 1919, before me personally appeared Marshall L. Brower, resident vice president of the American Surety Company of New York, to me known, who, being by me duly sworn, did depose and say that he resides in the city of New York, N. Y.; that he is the resident vice president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporat seal; that it was so affixed by order of the board of trustees of said corporation; and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said Marshall L. Brower further said that he is acquainted with W. J. Spalckhaver and knows him to be one of the resident assistant secretaries of said corporation; that the signature of said W. J. Spalckhaver subscribed to the said instrument, is in the genuine handwriting of the said W. J. Spalckhaver and was thereto subscribed by the like order of the said board of trustees, and in the presence of him the said

MARSHALL L. BROWER,
Resident Vice President.

[SEAL.] H. M. HESS,
Notary Public, Bronx County No. 57.

Bronx Co. Register's No. 255. Certificate filed in N. Y. County No. 332. New York Co. Register's No. 10606. Certificate filed in Kings Co. No. 43. Kings County Register's No. 242. Certificates filed in Queens, Richmond, and Westchester Counties. Commission expires March 30, 1920.

83 AUTHORITY OF SIGNERS FOR SURETY.

Extract from the record book of the Board of Trustees of the American Surety Company of New York.

The first meeting of the Board of Trustees of the American Surety Company of New York, after the annual stockholders' meeting, was held at the office of the company, No. 100 Broadway, New York City, on Tuesday, January 21, 1919, at twelve o'clock noon.

"The secretary read the report of the nominating committee as follows:

"To the BOARD OF TRUSTEES,
American Surety Company of New York.

"GENTLEMEN: The committee appointed by the executive committee of this company, at their meeting held Tuesday, December 3, 191

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for the purpose of nominating * * * officers of the company * * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate for * * * place, New York, N. Y.; resident vice presidents, Marshall L. Brower, A. E. Cotterell, William M. Tomlins, jr., Lester S. Moore, W. H. E. Reinecke, E. D. Sadler, C. S. Waterbury, Louis Papen, Samuel B. Brewster, C. E. St. John; resident assistant secretaries, Marshall L. Brower, A. E. Cotterell, Charles S. Waterbury, Daniel Stewart, E. D. Sadler, W. H. E. Reinecke, E. J. Sabater, Louis Papen, Robert L. Neptune, M. E. McGuire, Geo. W. Acritelli, Charles A. Stumpf, Lester S. Moore, Clark Reynolds, F. G. Merrill, Samuel B. Brewster, C. E. St. John, Willis E. McCurdy, William J. Spalkhaver, Wm. C. Sievers, R. P. Luckett, Peter H. May. * * *

"Whereupon, it was

"*Resolved*, That the secretary be authorized to cast one ballot on behalf of the trustees present for the members of the executive committee, finance committee, committee on accounts, committee on capital box, officers and counsel, as recommended by the nominating committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their successors are elected.

"The following resolution was adopted:

"*Resolved*, That the resident vice presidents be, and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the company to any and all obligations for or on behalf of the company, such obligations, however, to be attested in every instance by a resident assistant secretary." * * *

STATE OF NEW YORK,
County of New York, ss:

I, H. E. Ising, assistant secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts from the record book of the Board of Trustees of the American Surety Company of New York, with the original record of said board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said record book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the company, at the city of New York, this 21st day of January, 1919.

[SEAL.]

H. E. ISING,
Assistant Secretary.

CLOSE IN CENTER

84 (Indorsed:) 4526. (3) Dakota Central Tel. Co. et al, Pltfs. in Error, vs. State, ex rel., Payne, Atty. Gen., &c., et al., Defts. in Error. Bond. On appeal to U. S. Supreme Court and order allowing bond. Supreme Court State of South Dakota. Filed April 5, 1919. E. F. Swartz, clerk.

85 UNITED STATES OF AMERICA, *ss:*

To State of South Dakota, ex rel., Byron S. Payne, as Attorney General, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota:

Greeting: You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 60 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Supreme Court of the United States wherein Dakota Central Telephone Company, a corporation, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Ellison G. Smith, Presiding Judge of the Supreme Court of South Dakota, this fifth day of April, in the year of our Lord one thousand nine hundred and nineteen.

ELLISON G. SMITH,
Presiding Judge of the Supreme Court of South Dakota.

85½ (Indorsed:) 4526. (4) Citation. Due and legal service of the within citation at the City of Pierre, South Dakota, is hereby admitted this 5th day of April, 1919. Byron S. Payne, Attorney General, State of South Dakota. Peter Norbeck, Governor of the State of South Dakota. Supreme Court, State of South Dakota. Filed Apr. 5, 1919. E. F. Swartz, Clerk.

86 *Stipulation.*

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL., BYRON S. PAYNE, AS Attorney General, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiffs,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, defendants.

It is hereby stipulated by and between counsel for Plaintiffs and counsel for Defendants, that the Clerk of the Supreme Court of the State of South Dakota shall include in the transcript to be sent the Clerk of the Supreme Court of the United States the following: Summons and return showing service; Plaintiffs' Complaint; Affidavit of John J. Murphy and motion; order to show cause; defendants' answer; plaintiffs' reply; journal entry of submission of cause; opinion of the Supreme Court of the State of South Dakota; judgment of the Supreme Court of the State of South Dakota;

That on filing this stipulation the Clerk may forthwith make and certify said transcript.

Dated April 5th, 1919.

BYRON S. PAYNE,
OLIVER E. SWEET,
P. W. DOUGHERTY,
Attorney for Plaintiff.

EDGAR M. MORSEMAN, JR.,
Attorney for Defendants.

87 (Indorsed:) 4526. (5) State, ex rel., Payne, Atty. Gen., et al., vs. Dakota Central Telephone Co., et al. Stipulation in re Transcript of Record. Supreme Court, State of South Dakota. Filed Apr. 5, 1919. E. F. Swartz, Clerk.

88 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the Supreme Court of the State of South Dakota.

Greeting: Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of South Dakota before you, or some of you, being the highest court of law or equity of the said State in which a decision

could be had in the said suit between Dakota Central Telephone Company, a corporation; Northwestern Telephone Exchange Company, a corporation; Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, plaintiffs in error, vs. State of South Dakota, ex rel. Byron S. Payne, as attorney general, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being re-
89 pugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said Dakota Central Telephone Company, a corporation; Northwestern Telephone Exchange Company, a corporation; Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 7th day of April, in the year of our Lord one thousand nine hundred and nineteen.

[SEAL.] JERRY CARLETON,
Clerk of the District Court of the United States for the District of South Dakota.

Allowed by:

ELLISON G. SMITH,
Presiding Judge of the Supreme Court of South Dakota.

(Indorsed:) 4526. (6) Supreme Court of the United States. October term, 191—. Dakota Central Telephone Company et al., plaintiffs in error, vs. State of South Dakota, ex rel., defendant in error. Writ of error. Supreme Court State of South Dakota. Filed Apr. 7, 1919. E. F. Swartz, clerk.

90 *Clerk's certificate.*

In the Supreme Court of the State of South Dakota.

STATE OF SOUTH DAKOTA, EX REL. BYRON S. PAYNE, AS attorney general, and John J. Murphy and P. W. Dougherty, as and constituting the Board of Railroad Commissioners of the State of South Dakota, plaintiffs,

vs.

DAKOTA CENTRAL TELEPHONE COMPANY, A CORPORATION, Northwestern Telephone Exchange Company, a corporation, Nebraska Telephone Company, a corporation, and South Dakota State Telephone Company, a corporation, defendants.

STATE OF SOUTH DAKOTA,
County of Hughes, ss:

I, E. F. Swartz, clerk of the Supreme Court of the State of South Dakota, hereby certify the foregoing transcript, consisting of 89 pages, constitutes a full, true, and correct copy of the proceedings had and orders entered in the above-entitled cause, as set forth therein, as the same appears on file and of record in this office, with the exception of petition for writ of error and order allowing same, bond and order allowing bond, the writ of error, the citation, and assignment of errors and stipulation in re transcript of record herewith attached, at pages 72 et seq., respectively, which are the original petition for writ of error and order allowing same, bond and order allowing bond, writ, assignment, and citation and stipulation in re transcript of record.

The foregoing constitutes the entire transcript in the cause.

Witness my hand and the official seal of said court, this 7th day of April, A. D. 1919.

[SEAL.]

E. F. SWARTZ,
Clerk of the Supreme Court of the State of South Dakota.

(Indorsed:) File No. 27053. South Dakota Supreme Court. Term No. 967. Dakota Central Telephone Company et al., plaintiffs in error, vs. The State of South Dakota, ex rel. Byron S. Payne, attorney general, et al. Filed April 10th, 1919. File No. 27053.